

***United States Court of Appeals
for the Second Circuit***



AMICUS BRIEF

NO. 77-6111

APPENDIX TO APPELLANT'S BRIEF

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES OF AMERICA, PLAINTIFF
AND
SOUTH END EDUCATION COMMITTEE, ET AL
INTERVENING PLAINTIFFS

V.

BOARD OF EDUCATION OF WATERBURY,
CONNECTICUT, ET AL,

DEFENDANTS



DEFENDANTS' APPEAL FROM UNITED STATES
DISTRICT COURT, DISTRICT OF CONNECTICUT,
ORDER DATED JUNE 10, 1977 APPROVING
MAGISTRATE'S REPORT ON REMEDIAL PLANS
AND ORDERING DEFENDANTS TO IMPLEMENT
"AMICUS PLAN C" PROPOSED BY BARNARD
SCHOOL P.T.A., INC., AS AMICUS CURIAE

MICHAEL J. DALY, III
50 HOLMES AVENUE
WATERBURY, CT. 06702

CARL R. CICHETTI
236 GRAND STREET
WATERBURY, CT. 06702

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF CONNECTICUT

Filed
Oct 14 1969

UNITED STATES OF AMERICA,
Plaintiff,

v.

THE BOARD OF EDUCATION OF
WATERBURY, CONNECTICUT;
GEORGE P. HARLAMON, Chairman
Ex-Officio, SALVATORE G.
TERENZO, President, KENNETH
M. CARTER, FRANCIS W. GERARDI,
ALLAN H. HERTZMARK, PASQUALE A.
MANGINI, JR., MICHAEL A. MARTONE,
JR., FRANK PERRELLA, FRANK L.
PLACE and REVEREND JONATHAN E.
REED, Members of the Board of
Education; MICHAEL F. WALLACE,
Superintendent of Schools; and
the CITY OF WATERBURY, CONNECTICUT,
Defendants.

CIVIL ACTION
NO. 13465

COMPLAINT

The United States of America alleges that:

1. This action is brought by the Attorney General on behalf of the United States pursuant to Section 407 of the Civil Rights Act of 1964, 42 U.S.C. 2000c-6.
2. This Court has jurisdiction of this action under 42 U.S.C. 2000c-6 and 28 U.S.C. 1345.
3. The defendant Board of Education of Waterbury, Connecticut, is a public body and supervises the operations of all public schools within the City of Waterbury, Connecticut, and is responsible for the assignment of students to such schools.
4. The defendant Salvatore G. Terenzo is the president, the defendant George P. Harlamon as

mayor of the City of Waterbury is the chairman ex-officio, and the defendants Kenneth M. Carter, Francis W. Gerardi, Allan H. Hertzmark, Pasquale A. Mangini, Jr., Michael A. Martone, Jr., Frank Parrella, Frank L. Place and Reverend Jonathan E. Reed are members of the Board of Education of Waterbury, Connecticut, and each resides within the State of Connecticut.

5. The defendant, Michael F. Wallace, is the Superintendent of Schools in the City of Waterbury, Connecticut, and as such is responsible for the supervision of the Waterbury, Connecticut, public schools under the control of the defendant Board of Education. He resides in the State of Connecticut.

6. The defendant City of Waterbury is a municipal corporation in the State of Connecticut and through its Department of Education provides transportation for public and independent non-public school students in the City of Waterbury, Connecticut.

7. The City of Waterbury, Connecticut, public school system consists of 27 public elementary schools. Approximately 9,647 white pupils, 2,715 Negro pupils and 627 Puerto Rican pupils are enrolled in the elementary grades in the system.

8. The defendants have engaged in racial discrimination in the operation of the Waterbury school system in violation of the Fourteenth Amendment to the Constitution of the United States.

9. The racial discrimination alleged in paragraph 8 has included:

- (a) The operation of a school system wherein elementary school students are assigned on the basis of their race. Negro and Puerto Rican students generally have been assigned to the elementary school districts in which they reside. However, white children who reside in public school districts where substantial numbers of Negro and Puerto Rican children also reside have been transported by the City of Waterbury from such public school districts to all white or predominantly white independent non-public schools, wherein to a substantial extent, facilities of public schools which commonly are located adjacent to or near the respective independent non-public schools are shared. This practice has resulted in certain public elementary schools becoming and remaining predominantly Negro and Puerto Rican;
- (b) The establishment of elementary school district boundaries on the basis of the race of the children in the affected schools, thus insuring that certain schools would remain predominantly white and certain schools would become and remain predominantly Negro and Puerto Rican; and

- (c) Allowing white kindergarten aged students, but not Negro or Puerto Rican kindergarten aged students, to transfer out of predominantly Negro and Puerto Rican public school districts in which they reside in order to attend predominantly white kindergartens in other public school districts.

10. The defendants have refused to take reasonable steps to correct the effects of its policies and practices of racial discrimination described in paragraphs 8 and 9 and to insure that such policies and practices for the 1969-70 school year, and thereafter, will conform to the requirements of the Fourteenth Amendment to the Constitution of the United States.

11. As a result of the policies and practices of the defendants described in the preceding paragraphs, the defendants have denied Negro and Puerto Rican students in the Waterbury school system equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States.

12. The Attorney General has certified that he has received a complaint in writing signed by a parent of minor children in the City of Waterbury, Connecticut, alleging that said children are being deprived of the equal protection of the laws; that the Attorney General believes the complaint to be meritorious; that the signer of the complaint is unable, in his judgment, to initiate and maintain appropriate legal

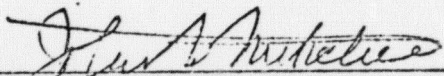
proceedings for relief; that the Waterbury Board of Education has been notified of the complaint; that he is satisfied that the Board of Education has had a reasonable time to adjust to the conditions alleged in the complaint; and that, in his judgment, the initiation of this action will materially further the orderly achievement of the elimination of racial discrimination in public education.

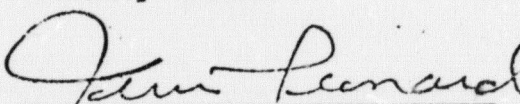
13. Technical assistance from the Department of Health, Education and Welfare is available to the defendants for the preparation, adoption and implementation of a desegregation plan which meets the requirements of federal law, provides for in-service training and such other steps as are necessary to bring about an orderly desegregation process.

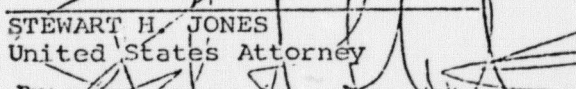
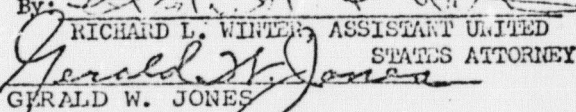
WHEREFORE, plaintiff prays that this Court enter an Order permanently enjoining the defendants, their employees, agents, officers, successors, and all persons in active concert or participation with any of them from failing or refusing to cease the unlawful practices described in paragraphs 8, 9 and 10 of this Complaint and from failing or refusing to afford equal educational opportunities to all students in the Waterbury, Connecticut, public schools without regard to race and from failing to take prompt, affirmative steps to eliminate the racial identities of the schools within the City of Waterbury with respect to pupils, faculties, transportation and new construction and to assign pupils to schools without regard to their race.

Plaintiff further prays that the defendants be ordered to seek such technical assistance as may be necessary from the Division of Equal Educational Opportunity, Office of Education, Department of Health, Education and Welfare for the preparation and submission of a plan to accomplish this result at the earliest practicable date, including a program of in-service training and such other and further steps as may be necessary to bring about an orderly desegregation process.

Plaintiff further prays that this Court grant such additional relief as the needs of justice may require, together with the costs and disbursements of this action.


JOHN N. MITCHELL
Attorney General


JERRIS LEONARD
Assistant Attorney General


STEWART H. JONES
United States Attorney
By: 
RICHARD L. WINTER, ASSISTANT UNITED STATES ATTORNEY

GERALD W. JONES
Attorney
Department of Justice

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,
Plaintiff,

v.

THE BOARD OF EDUCATION OF
WATERBURY, CONNECTICUT,
et al.,

Defendants.

CIVIL ACTION NO. 13,465

CONSENT ORDER

This is a school desegregation case filed by the United States on October 13, 1969. Jurisdiction of the Court was invoked under 42 U.S.C. 2000c-6 and 28 U.S.C. 1345. The complaint alleged that the named defendants had by their policies and practices denied Negro and Puerto Rican students in the Waterbury school system the equal protection of the laws and had refused to take reasonable steps to correct the continuing effects of their discriminatory policies and practices. The relief requested was an injunction enjoining the defendants from failing to afford equal educational opportunities to all students in the Waterbury public schools without regard to race and from failing to take affirmative steps to eliminate the unconstitutional segregation of the elementary schools in the system.

Named as defendants were the Board of Education, the Mayor of the City of Waterbury, who is Chairman Ex-Officio of the board, the individual members of the board, the Superintendent of Schools and the City of Waterbury. In their answers, the defendants denied all of the substantive allegations of the complaint and asserted as a general defense that the concentration of minority group students in particular elementary schools was the result of residential and neighborhood patterns and not the result of any actions or policies on the part of the defendants. Further, the defendants contended that they had taken, and were taking, prompt, affirmative steps to eliminate the racial identity of schools within the City of Waterbury and alleged specific steps taken toward that end.

Since the filing of this action, the defendants have taken some steps which have altered the student assignment patterns for some of their elementary schools. For example, two of the schools with the highest concentration of black and Puerto Rican students were closed as regular schools and established to house students in a special educational program, Follow-Through. Also, implementation of a program entitled Project: Concern has resulted in a number of black students attending school in surrounding substantially all-white school districts; and the enrollment of black and Puerto Rican students in the non-public schools operating in Waterbury has increased. In addition, the defendants have planned

and are presently implementing the first stage of a school construction program to establish three middle-school complexes in the school system, each of which would house students in grades 6-8. The first of the middle school complexes, East End Middle School, is scheduled to open in September, 1974.

In addition to making the above changes in student assignment patterns, the defendants have undertaken a program to insure the provision of equal educational opportunities to the non-English speaking students enrolled in the school system. The defendants recognize the value and the need for that program in the Waterbury school system and presently are evaluating the program to determine whether it should be expanded and how it should be organized.

All parties agree that the completion of the proposed middle school complexes, plus a reconstitution of the zone lines for the K-5 schools so as to obtain the greatest amount of desegregation possible, would make

the operation of the school system at that time in complete compliance with federal law concerning desegregation of public schools. No firm date can be established, however, for the actual completion of the two remaining middle school complexes. In anticipation of completion and opening of the East End Middle School, the staff of the Department of Education prepared a proposal setting out the attendance areas to be served by the three proposed middle schools and, in addition, the staff proposed zones for the K-5 schools, which would feed into each middle school upon the completion of each said middle school. The proposal of the school staff, together with the projected racial enrollments of each school under that plan, are attached as Attachment A, to this Order.

The United States agrees that upon completion of each new middle school and the implementation of the student assignment plan in Attachment A, hereto, or an equally effective plan, the schools of Waterbury will be satisfactorily desegregated. The defendants are committed to the implementation of the concepts contained in Attachment A, hereto, or an equally effective plan. The parties agree, however, that entry of the following Order will resolve the remaining issues in this case and make a trial unnecessary.

The defendants, therefore, without admitting any of the allegations of the complaint and specifically denying that they have discriminated against any person on the basis of race or national origin in the operation of the Waterbury school system, agree to entry of the following order:

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the defendants, their agents, employees, successors,

assigns, and all persons in active concert or participation with them, are hereby enjoined from discriminating against any person, because of his race, color, religion, or national origin, in the operation of the Waterbury school system.

IT IS FURTHER ORDERED that the defendants will devise, adopt, and implement a student assignment plan for the elementary (K-8) students attending school in the system which conforms to the following provisions and schedule:

1. The plan shall achieve the greatest amount of desegregation possible, considering the practicalities, and shall be implemented in such a manner that the burden of desegregation does not fall more heavily upon students of one race or national origin than upon students of another race or national origin.

2. The plan shall specify the attendance areas to be served by each of the proposed middle schools, which shall contain grades 6, 7 and 8, and shall also specify the zones for the K-5 schools which will feed into each of the said proposed middle schools and the school buildings which will be utilized to house the K-5 students in each zone.

3. The plan shall provide for implementation of those provisions related to the East End Middle School and the K-5 feeder schools in that attendance area upon the opening of the said East End Middle School in September, 1974.

4. The plan shall specify new attendance zones for students residing in the West End area to be effective upon the completion of the West End Middle School or September, 1975, at the latest, in such a manner that student assignments will be consistent with paragraph 1, above.

5. The plan shall specify new attendance zones for students residing in the North-Central area to be effective upon the completion of the North-Central Middle School or September, 1977, at the latest, in such a manner that student assignments will be consistent with paragraph 1 above.

6. In the event that defendants fail to comply substantially with the provisions of paragraphs 3, 4 and 5, above (relative to the date of the implementation of a desegregation plan for the respective affected Middle School attendance zones), then the defendants shall implement reasonable interim measures which will desegregate the schools in the said affected Middle School attendance zones so that student assignments will be consistent with paragraph 1 above, unless the defendants make a timely application for modification of this Order.

7. While the specific zone lines and utilization of buildings proposed in Attachment A hereto, are not required, the results projected under that plan together with the previous policy statements of the defendants concerning student assignment, such as the statement of August 15, 1966, shall serve as guides in determining whether the final plan substantially conforms to paragraph 1, above.

8. The plan shall contain projections of student enrollment showing the expected enrollment of white, black and Puerto Rican students for each school under the plan submitted pursuant to paragraph 2, above.

9. The plan described in paragraph 2, above, shall be filed by January 15, 1974, and served upon the plaintiff.

10. If the parties cannot agree upon the sufficiency of the plan, a hearing will be scheduled to determine whether the plan substantially complies with the provisions of this Order.

IT IS FURTHER ORDERED that the defendants shall continue to make efforts to provide a program which is adequate to meet the special educational needs of the non-English speaking students enrolled in the Waterbury school system. To that end, the defendants shall, from year to year, evaluate the extent to which such needs are being met and shall provide the necessary resources to meet fully the students' needs as determined by those studies.

Done this ^{7th} ~~9th~~ day of June, 1973

S/Thomas D. Murphy
UNITED STATES DISTRICT JUDGE

Approved:

James H. Mcenan
Attorney for Defendants

J. F. O'Brien
Attorney for Defendants

Thomas M. Keeling
Attorney for Plaintiffs

CIVIL ACTION NO. 13,465

ATTACHMENT A

PROPOSED FEEDER PATTERNS FOR MIDDLE SCHOOL-HIGH SCHOOL COMPLEXES

INCLUDING

RECOMMENDATIONS FOR RE-DISTRICTING K-5 SCHOOLS

AND

PHASING OUT OF CERTAIN CURRENT K-8 FACILITIES

CONTENTS

Memorandum from Superintendent Wallace-----	<u>Page</u> 1
Introduction-Overview-----	2
Current High School Feeder Pattern and Elementary School Districts (MAP)-----	4
Proposed Division of City into Three Sections (MAP)-----	5
Proposed Pupil Enrollment in the Three Sections (CHART)-----	6
Recommended Procedures for K-5 Re-districting-- <u>East End</u> -----	7
Detail Map of Proposed East End K-5 Districts-----	8
Recommended Procedures for K-5 Re-districting-- <u>North End</u> -----	9
Detail Map of Proposed North End K-5 Districts-----	10
Recommended Procedures for K-5 Re-districting-- <u>West End</u> -----	11
Detail Map of Proposed West End Districts-----	13
Summary of Proposed City-Wide K-5 Districts (MAP)-----	14
Current Elementary Schools Recommended for Phase-Out/Conversion-----	15

MEMORANDUM

FROM: Michael F. Wallace, Superintendent of Schools DATE: March 9, 1973
TO: Members of the Board of Education
SUBJECT: Enclosed Materials - Justice Department

At the Monday, March 5, 1973 work session of a Committee of the Whole, the Board of Education staff presented the following materials:

1. City-wide Pupil Feeder Plan K-12
2. Distribution of Pupils
3. Procedures for East End Section for September, 1974
4. Resulting Enrollment as per procedures

Essentially, the materials received by the Board met the requirements of Phases I and II of the Board/Justice Department Time Schedule.

At the conclusion of the 3/5/73 session, the Board directed staff to complete phases III and IV (North Central and West End K-5 patterns and exploration of temporary expansion of Middle School Program). The enclosed materials are being delivered to each Board member prior to the deadline of March 19 in order to allow each Board member sufficient time to examine the plans in the context of meeting the Board's schedule with the Justice Department.

Because of the complexity of the issues involved and the resolutions submitted for your study, I am asking that another Committee of the Whole work session be scheduled, at the Board's earliest convenience. Such a meeting will permit staff an opportunity to explain fully the proposed plans and give each Board member an opportunity to resolve any questions he might have.

cc: Mayor Victor Mambruno
Corporation Counsel, John Mahaney
Asst. Corporation Counsel, James Meenan

611

INTRODUCTION

By the time the three Middle School-High School Complexes become operative, the City of Waterbury will need to have solved a number of issues. These include:

- 1) Equalization of the Middle School-High School populations;
- 2) Re-distribution of elementary school pupil populations in order to establish economically viable units as well as to phaseout inadequate buildings; and,
- 3) Elimination of racially identifiable elementary schools.

Through re-assignment of children in grades 6-7-8 to the Middle Schools, several of the existing elementary schools will be left with pupil populations below the size of a viable educational unit. In addition, implementation of the recommendations of the University of Connecticut Survey, as well as those established in the Comprehensive Plan for the City of Waterbury will require the closing of a number of antiquated school plants.

In the attached plan, attention has been given to:

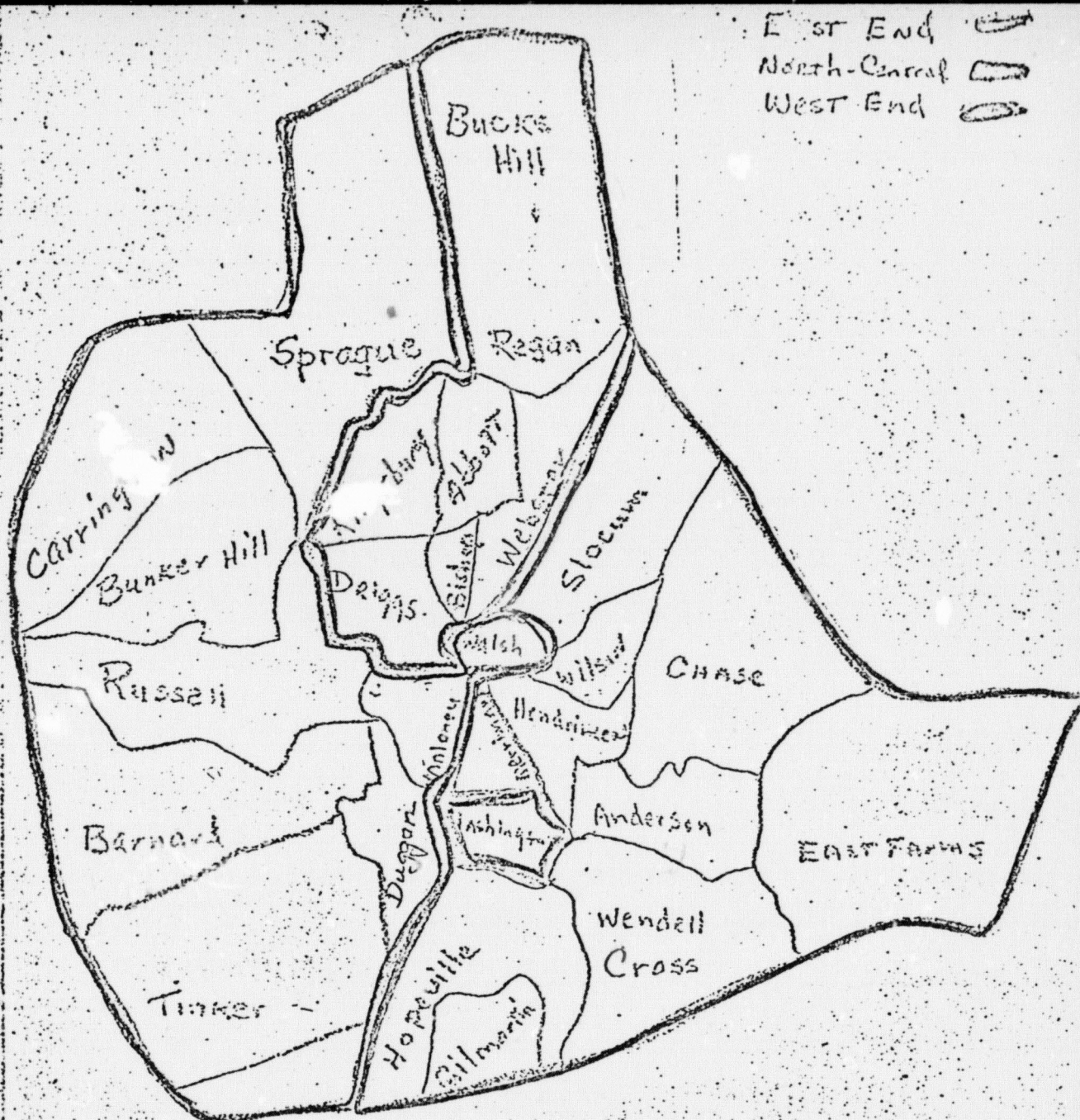
- 1) Assignment of pupils into three major areas of the City;
- 2) Elimination of some K-8 facilities;
- 3) Maintaining, wherever feasible, the existing neighborhood school concept based on accessibility;
- 4) Elimination of racial identifiability of schools;
- 5) Transportation costs;
- 6) Creating as few changes as necessary, for the fewest number of children.

The plan, if adopted, will result in the following:

- 1) A numerically equalized High school-Middle School Pupil Assignment Plan;
- 2) The phaseout of seven inadequate physical plants;

- 3) The conversion of four physical plants for other needed uses;
- 4) The development of non-racially identifiable K-5 school districts.

Finally, every step of the plan is dependent on the completion of the complex in each area. Of necessity, the procedures that follow are based on current housing and population patterns. The plan, therefore, must be open to change and modification based on housing and population developments occurring in each sector of the City.



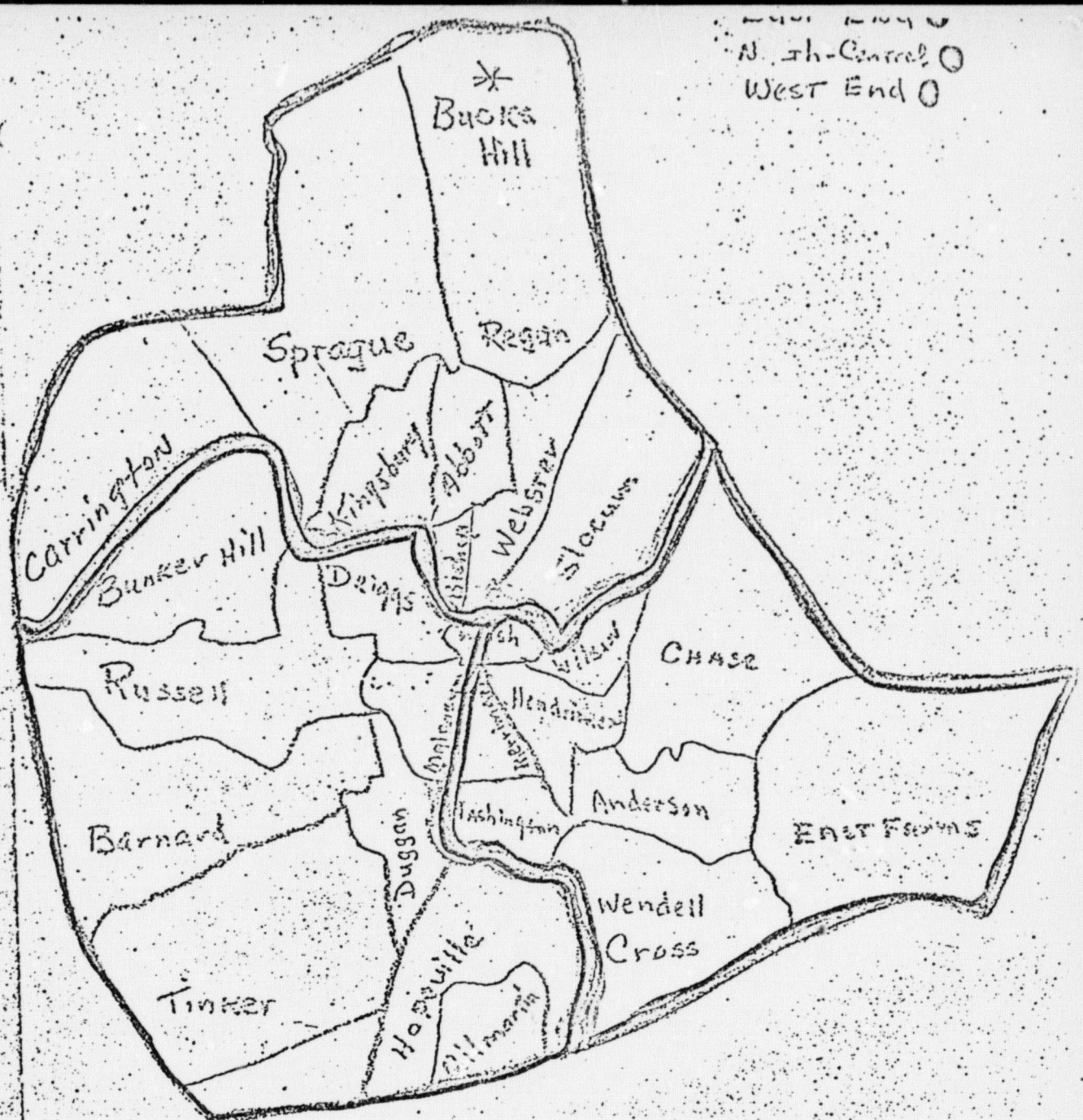
Present Feeder Patterns: 1965-1973

K-5

6-8

9-12

N. Th-Control O
West End O



Proposed Feeder Patterns:

K-5

6-8

9-12

Proposed Pupil Enrollment

East End					North Central					West End				
Existing K-8 School Districts	No. Pupils	B	W	SS	Existing K-8 School Districts	No. Pupils	B	W	SS	Existing K-8 School Districts	No. Pupils	B	W	SS
Anderson	282	8	271	3	Abbott	275	0	275	0	Barnard	293	2	288	3
Chase	900	16	874	10	Bucks Hill	455	116	329	10	Bunker Hill	506	10	494	2
Cross	275	6	268	1	Kingsbury	544	43	176	25	Driggs	658	315	261	82
F. Farms (F)	373	16	348	9	Regan	220	67	144	7	Duggan	192	25	150	17
F. Farms (W)	416	11	402	0	Slocum	486	250	224	12	Gilmanlin	236	41	178	17
Landrick	175	3	164	8	Sprague	792	80	697	15	Hopewille	437	29	391	17
Washington	552	23	440	89	Webster	464	207	216	41	Molnar	381	25	65	291
Wilson	251	248	0	6	Bishop	156	120	9	27	Russell	393	52	260	11
Walsh (2/3)	412	234	120	58	Corrington	527	24	496	7	Tink	612	0	612	0
Marion	355	5	121	224						Walsh (1/3)	206	159	27	20
Totals	4014	543	3031	440	Totals	3717	707	2866	144	Totals	3864	658	2746	460

Enrollment

K-5 2776
6-8 1235

% majority - - - - 75.5

Enrollment

K-5 2577
6-8 1375

% majority 73.1

Enrollment

K-5 2575
6-8 1297

% majority 71.1

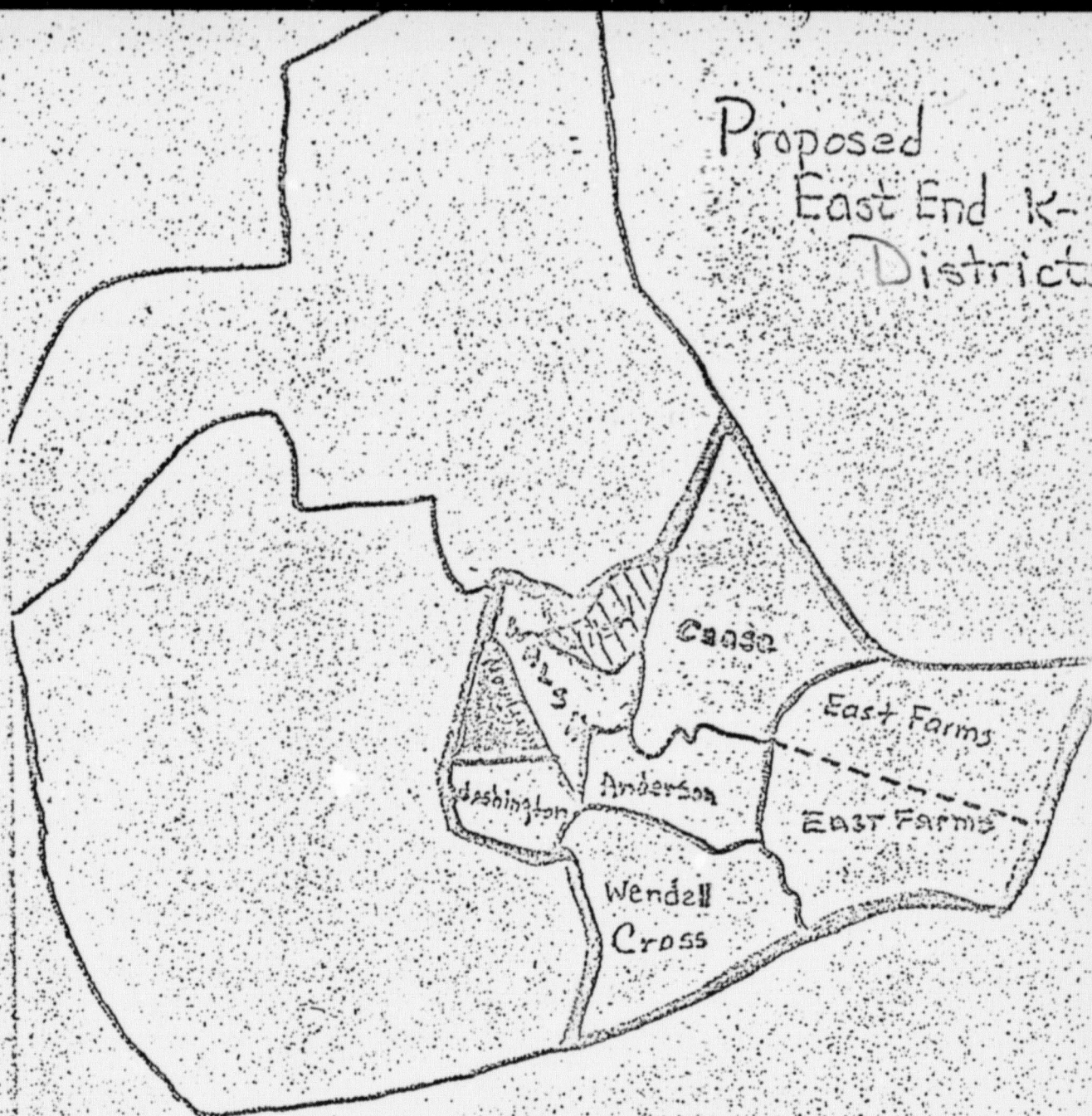
East End Procedures for September, 1974

1. Wilson children currently being bused to 13 K-8 schools be bused as follows:
 - 20 Anderson
 - 25 Chase
 - 20 Cross
 - 40 East Farms Primary
 - 30 East Farms Upper
2. East Farms Primary and East Farms Upper become K-5 schools;
3. 1/3 of current Walsh district become part of West End section and that 200 children be bused to vacancies in West End schools currently occupied by Wilson children.
4. Hendricken District be eliminated and incorporated into the Walsh district (156 Hendricken children go to Walsh K-5)
5. Merriman be eliminated as a school district and be incorporated into the following districts:
 - Washington - 35 children
 - Chase - 90 children
 - Cross - 95 children
 - E. Farms (U) - 35 children
 - E. Farms (P) - 50 children
6. Croft be eliminated as a 7-8th grade school; children be bused to East End Middle School.

The result of the above procedures will mean the following enrollment patterns:

<u>K-5 School</u>	<u># Pupils</u>	<u>% Minority</u>	<u>% Majority</u>	<u>Capacity</u>
Anderson	220	12.2	87.8	220
Chase	692	14.4	85.6	835
Cross	285	31.2	68.8	370
E. Farms (P)	484	19.8	80.2	515
Washington	434	23.7	76.3	435
E. Farms (U)	242	28.1	71.9	520
Walsh	420	39.0	61.0	730
TOTALS	2777	23.6	76.4	3625

Proposed
East End K-
District



Recommended Procedures

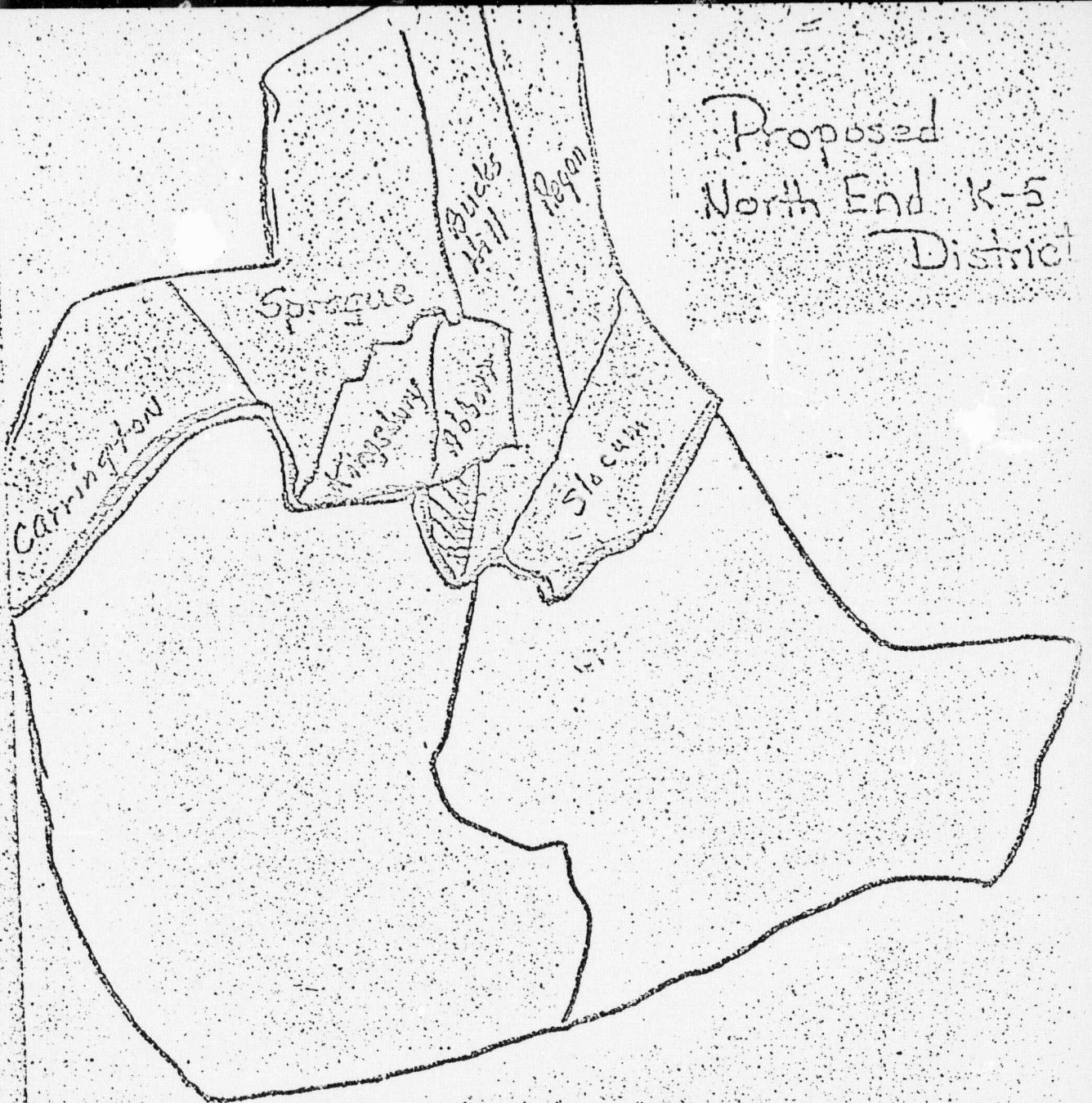
North Central Section

- I. Children from Bishop District currently bused to Russell and Barnard (in the proposed West End Section) will be bused to Sprague and Carrington.
- II. Children from Bishop District currently bused to Abbott and Kingsbury will continue to be bused to these two schools.
- III. Bucks Hill and Regan will become K-5 schools.
- IV. Webster School District will be absorbed by Bucks Hill, Regan and Abbott, (all contiguous) and the Webster facility will be phased out as recommended in the UConn Survey and the Comprehensive City Plan.
- V. Slocum will remain a K-5 school with current enrollment - 48% minority.

The results of the above procedures will mean the following enrollment pattern:

<u>K-5 School</u>	<u># Pupils</u>	<u>% Minority</u>	<u>% Majority</u>	<u>Capacity</u>
Carrington	386	12.9	87.1	585
Sprague	554	15.5	84.5	760
Bucks Hill	413	38.1	61.9	760
Regan	270	38.1	61.9	355
Kingsbury	360	19.1	80.9	560
Abbott	269	25.2	74.5	320
Slocum	<u>290</u>	<u>48.9</u>	<u>51.1</u>	<u>595</u>
TOTALS	2542	26.6	73.4	3935

Proposed
North End K-5
District



Recommendations:

1. The creation of a K-5 school at Croft either on a temporary basis until a new facility is erected or on a permanent basis through extensive re-modeling.

Croft would serve the following:

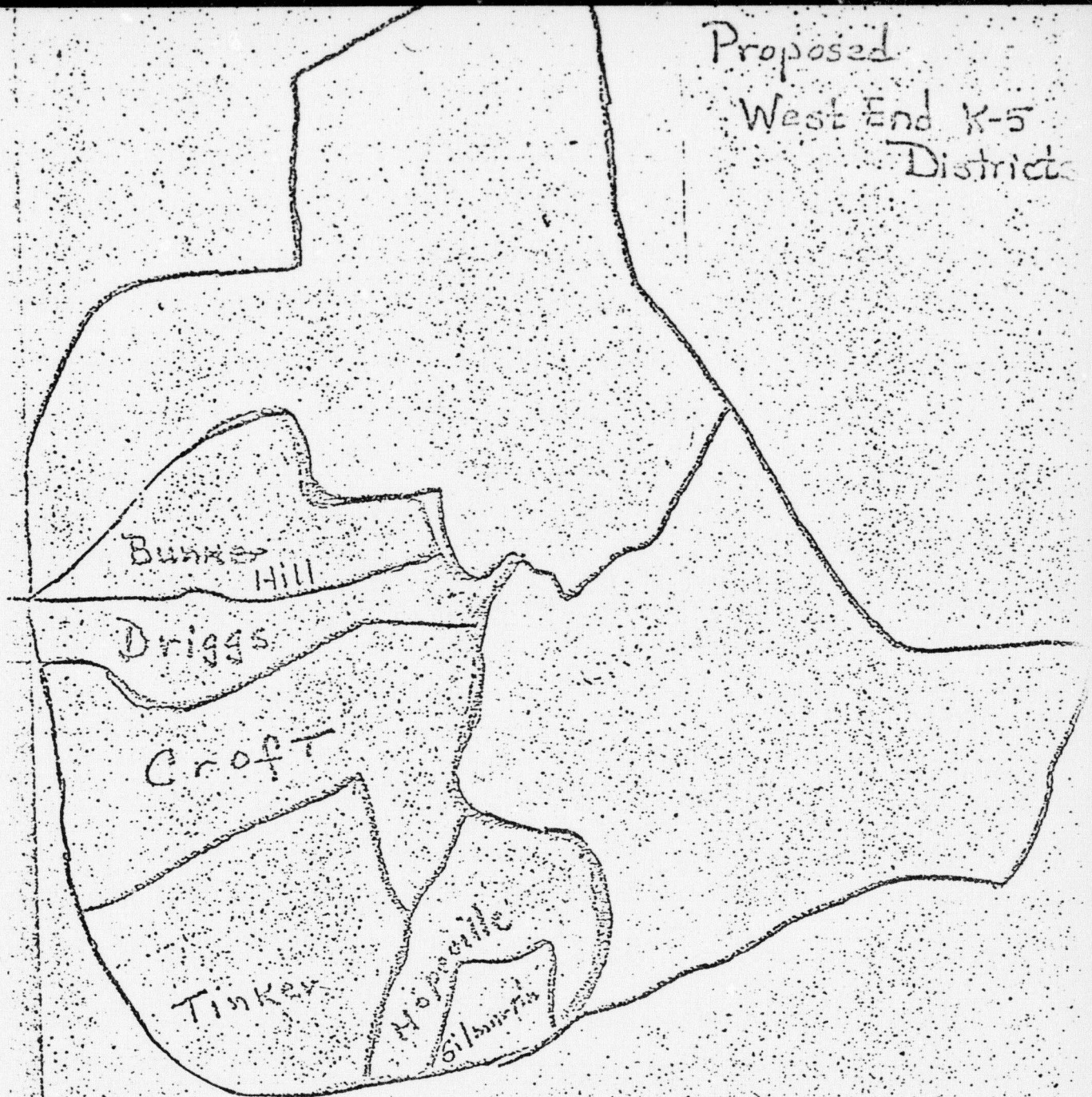
	<u># children</u>
Barnard	182
Duggan	120
Maloney	337
1/3 Russell	100

2. Re-draw Bunker-Hill - Driggs - Russell districts so that:
 - a. approximately 150 Driggs children are in expanded Bunker-Hill district
 - b. The remaining 240 Russell children are in the expanded Driggs district
3. Transport the 1/3 of Walsh as follows:
 - 150 to Tinker
 - 56 to Hopeville
4. Keep Duggan School as a Center for Retarded Children
5. Close the following schools:
 - Russell
 - Barnard
 - Maloney

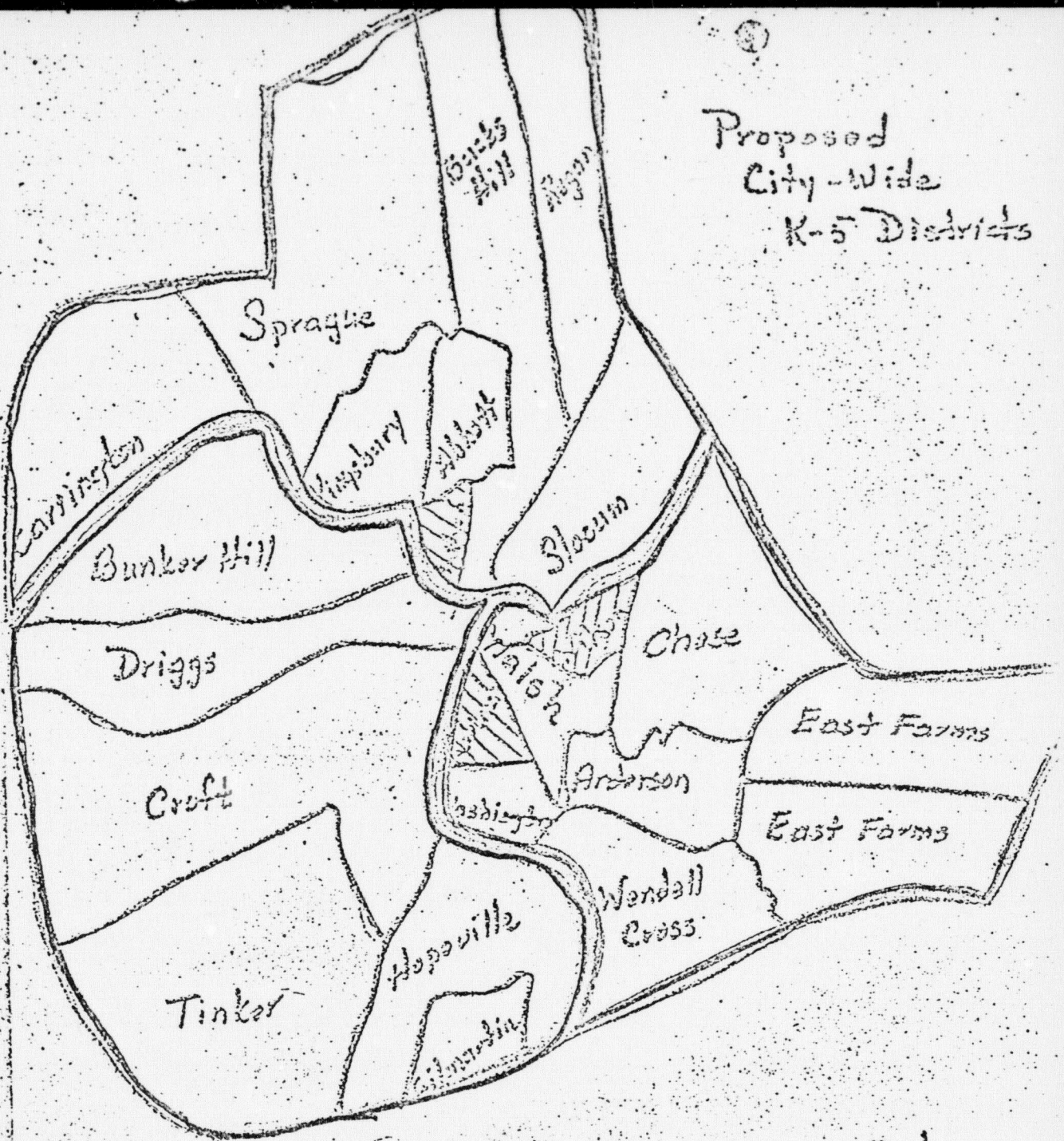
The preceding procedures will result in the following patterns K-5:

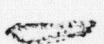
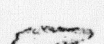
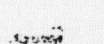
<u>K-5 School</u>	<u>#Pupils</u>	<u>Percentage Minority Enrollment</u>	<u>Percent Majority</u>	<u>Capacity</u>
Bunker Hill	466	20%	80%	550
Croft	739	42%	58%	1000
Tinker	578	27%	73%	550
Hopeville	306	20%	80%	545
Gilmartin	155	24%	76%	200
Driggs	567	34%	66%	625

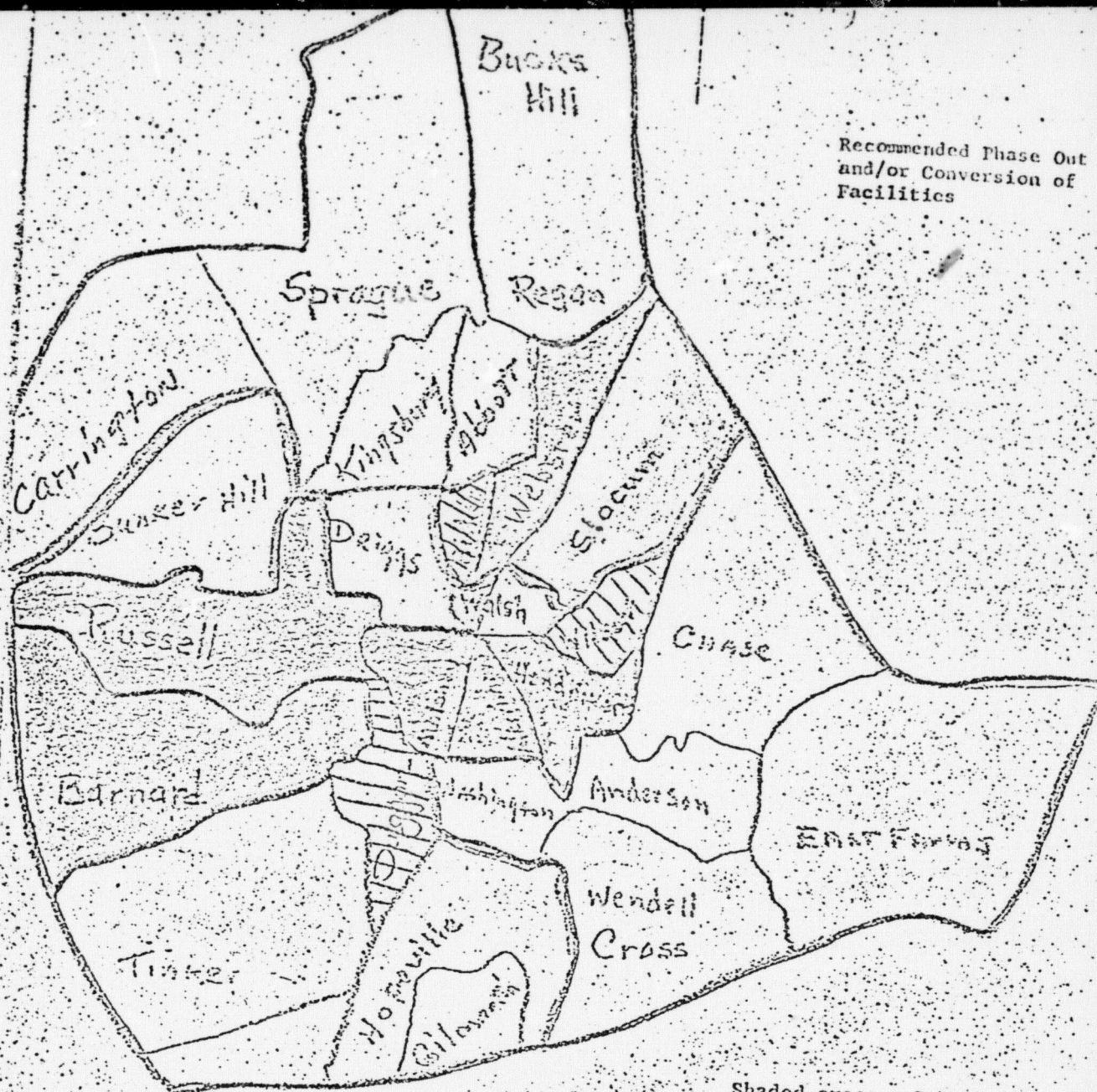
Proposed
West End K-5
Districts



Proposed
City-wide
K-5 Districts



East End 
 North Central 
 West End 



Shaded areas = School facilities
phased out.

Diagonal Lines = Facility converted
to other use
Bishop, Wilson
Follow Through
Duggan as Special
Services

FILED

JAN 15 8 33 AM '74

U. S. DISTRICT COURT
NEW HAVEN, CONN.

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA :

Plaintiff :

v. :

CIVIL ACTION NO. 13,465 :

THE BOARD OF EDUCATION OF
WATERBURY, CONNECTICUT,
ET AL :

Defendants :

SUPPLEMENT TO CONSENT ORDER

1. A Consent Order was entered, in the instant school desegregation case, on June 7, 1973, per Order of Honorable Thomas F. Murphy, United States District Judge. Counsel for the defendants and counsel for the plaintiff noted their approval of the Consent Order on same.

2. Paragraph 9 (set forth on Page 6 of the said Consent Order) states: "The plan described in paragraph 2, above, shall be filed by January 15, 1974, and served upon the plaintiff."

3. On January 14, 1974 the defendant, The Board of Education of Waterbury, Connecticut, voted as follows:

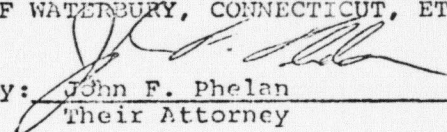
"VOTED: The Waterbury Board of Education recommends submission to the United States District Court for the district of Connecticut Plan II with the notation that we are ready to implement the Feeder Plan in the East End sector.

"The Board of Education reserves the right to make modifications in all sectors in accordance with population shifts within the city."

4. Attached hereto and made part hereof is the "Plan II" referred to in the said Board of Education vote of January 14, 1974.

Dated at Waterbury, Connecticut this 15th day of January, 1974.

DEFENDANTS, THE BOARD OF EDUCATION
OF WATERBURY, CONNECTICUT, ET AL

By: 
John F. Phelan
Their Attorney

PLAN H PROPOSAL

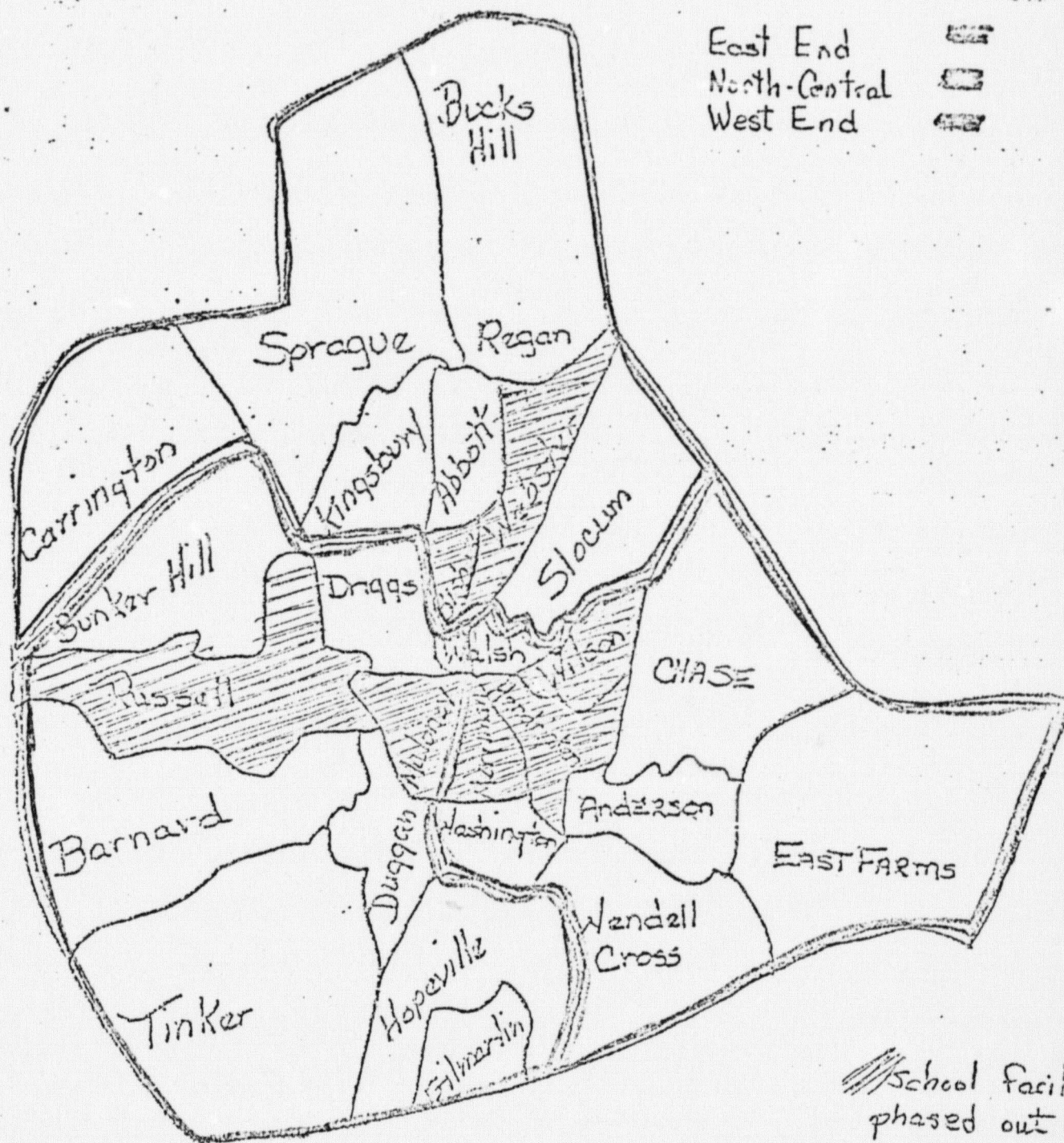
TABLE OF CONTENTS

Board of Education Statement	1
Map - East End = Red, West End = Blue, North End = Green	2
Plan <u>II</u> - Middle School Feeder Plan	3
Recommended East End Procedures	4
Recommended West End Procedures	5
Recommended North End Procedures	6
Proposed Pupil Enrollment - K-5 East End 1974	7
Proposed Pupil Enrollment - K-5 West End 1975	8
Proposed Pupil Enrollment - K-5 North End 1977.	9
Pupil Enrollment - October 1, 1973	10

Revised 1-14-74

The Waterbury Board of Education recommends submission to the United States District Court for the district of Connecticut Plan H with the notation that we are ready to implement the Feeder Plan in the East End sector.

The Board of Education reserves the right to make modifications in all sectors in accordance with population shifts within the city.



PLAN H
MIDDLE SCHOOL FEEDER PLAN

<u>East End</u>		<u>North End</u>		<u>West End</u>	
2/3 Walsh	120	Sprague	267	Driggs	203
Chase	326	Bucks Hill	207	Bunker Hill	173
East Farms (P)	0	Regan	0	Hopeville	146
East Farms (U)	276	Carrington	155	Gilmartin	84
Anderson	87	Kingsbury	188	Tinker	187
Cross	101	Abbott	101	1/3 Walsh	60
Hendricken	27	Slocum	187	Russell	102
Wilson	126	Bishop	71	Barnard	107
Merriman	32	Webster	135	Duggan	63
Croft-Merriman	103			Maloney	40
Croft-Hendricken	50			Croft-Maloney	103
Washington	<u>186</u>				
	1434		<u>1311</u>		<u>1268</u>

Recommended East End Procedures

1. Wilson children currently being bused be transported as follows:

- 20 Anderson
- 25 Chase
- 20 Cross
- 40 East Farms Primary
- 32 East Farms Upper

2. East Farms Primary and East Farms Upper become K-5 schools
3. 1/3 of current Walsh district become part of the West End section and that 200 children be bused to vacancies in West End schools currently occupied by Wilson children
4. Hendricken district be eliminated and incorporated into the Walsh district (143 Hendricken children go to Walsh K-5)
5. Merriman be eliminated as a school district and be incorporated into the following districts:

- Washington - 35 children
- Chase - 80 children
- Cross - 80 children
- E. Farms (U)- 35 children
- E. Farms (P)- 46 children

6. Croft be eliminated as a 7-8th grade school; children be bused to East End Middle School

Recommended West End Procedures

1. Close Croft as a school and retain Barnard and Duggan as K-5 facilities
2. Barnard and Duggan would serve the following:
 - Transport 113 children from Maloney to Barnard
 - Transport 128 children from Maloney to Duggan
 - Transport 98 children from Maloney to Hopeville
3. Re-draw Bunker Hill, Driggs and Russell districts so that:
 - a. Approximately 150 Driggs children are in expanded Bunker Hill district
 - b. Russell children are in the expanded Driggs district
4. Transport the 1/3 Walsh as follows:
 - 100 to Tinker
 - 33 to Hopeville

Recommended North End Procedures

1. Children from the Bishop district currently bused to Russell and Barnard will be bused to Sprague and Carrington.
2. Children from the Bishop district currently bused to Abbott and Kingsbury will continue to be bused to these two K-5 schools.
3. Bucks Hill and Regan will become K-5 schools.
4. Webster School district will be absorbed by the Bucks Hill, Regan and Abbott Schools (all contiguous to Webster) and the Webster facility will be phased out or converted for other use.
5. Slocum will remain a K-5 school with its current enrollment.

Proposed Pupil Enrollment

K-5

East End - 1974

<u>School</u>	<u>B</u>	<u>W</u>	<u>SS</u>	<u>Total</u>
* Anderson	5	176	2	183
* Chase	13	561	3	577
* Cross	5	171	0	176
* East Farms (P)	40	447	13	500
* East Farms (U)	21	206	3	230
* Merriman	10	87	179	276
* Wilson	133	0	4	137
* Hendricken	8	118	17	143
* 2/3 Walsh	134	80	52	266
* Washington	<u>17</u>	<u>273</u>	<u>70</u>	<u>360</u>
	386	2119	343	2848

* See page 4

Proposed Pupil Enrollment

K-5

West End - 1975

<u>School</u>	<u>B</u>	<u>W</u>	<u>SS</u>	<u>Total</u>
* Barnard	0	198	3	201
Bunker Hill	2	299	5	306
* Duggan	12	95	11	118
** Driggs	199	174	42	415
Gilmartin	38	128	15	181
* Hopeville	21	235	14	270
Tinker	2	423	0	425
** Russell	16	160	12	188
1/3 Walsh	115	8	10	133
Maloney	<u>12</u>	<u>45</u>	<u>282</u>	<u>339</u>
	417	1765	394	2576

* See below

** See page 5 Par. 2a. and b.

1. Transport from Maloney to Duggan 128 children
2. Transport from Maloney to Barnard 113 children
3. Transport from Maloney to Hopeville 98 children
4. Maloney will be phased out as a K-6 school

Proposed Pupil Enrollment

K-5

North End - 1977

<u>School</u>	<u>B</u>	<u>W</u>	<u>SS</u>	<u>Total</u>
Abbott	0	180	0	180
* Bishop	71	9	9	89
Bucks Hill	44	147	3	194
Slocum	128	123	8	259
Sprague	64	433	26	523
Carrington	20	360	10	390
Kingsbury	26	299	13	338
Regan	46	154	5	205
* Webster	<u>122</u>	<u>118</u>	<u>18</u>	<u>258</u>
	521	1823	92	2436

* See page 6

EAST END						NORTH END						WEST END					
School	Total Enrollment	K-5 6-8	B W	W W	SS SS	School	Total Enrollment	K-5 6-8	B W	W W	SS SS	School	Total Enrollment	K-5 6-8	B W	W W	SS SS
Anderson	270	<u>183</u> 87	<u>5</u> 7	<u>176</u> 79	<u>2</u> 1	Abbott	281	<u>180</u> 101	<u>0</u> 0	<u>180</u> 101	<u>0</u> 0	Barnard	308	<u>201</u> 107	<u>0</u> 0	<u>198</u> 107	<u>3</u> 0
Chase	903	<u>577</u> 326	<u>13</u> 10	<u>551</u> 312	<u>3</u> 4	Bishop	160	<u>89</u> 71	<u>71</u> 57	<u>9</u> 7	<u>9</u> 7	Bunker Hill	479	<u>326</u> 173	<u>2</u> 7	<u>321</u> 164	<u>5</u> 0
Cross	277	<u>176</u> 101	<u>5</u> 1	<u>171</u> 100	<u>0</u> 0	Bucks Hill	401	<u>194</u> 207	<u>44</u> 39	<u>147</u> 161	<u>3</u> 7	Duggan	181	<u>118</u> 63	<u>12</u> 10	<u>93</u> 40	<u>11</u> 9
East Farms (P)	500	<u>500</u> 0	<u>40</u> 0	<u>447</u> 0	<u>13</u> 0	Slocum	446	<u>259</u> 187	<u>128</u> 107	<u>123</u> 74	<u>8</u> 6	Driggs	618	<u>415</u> 203	<u>169</u> 10	<u>174</u> 90	<u>43</u> 13
East Farms (U)	506	<u>230</u> 276	<u>21</u> 17	<u>206</u> 291	<u>3</u> 8	Sprague	790	<u>523</u> 267	<u>64</u> 31	<u>433</u> 234	<u>26</u> 4	Gilmartin	265	<u>181</u> 84	<u>28</u> 13	<u>120</u> 67	<u>15</u> 7
Merriman K-5	308	<u>276</u> 32	<u>10</u> 0	<u>87</u> 9	<u>179</u> 23	Kingsbury	526	<u>338</u> 188	<u>26</u> 23	<u>299</u> 162	<u>13</u> 3	Hopeville	416	<u>270</u> 145	<u>21</u> 9	<u>222</u> 131	<u>14</u> 0
Wilson	263	<u>137</u> 126	<u>133</u> 123	<u>0</u> 0	<u>4</u> 3	Regan	205	<u>205</u> 0	<u>46</u> 0	<u>154</u> 0	<u>5</u> 0	Tinker	612	<u>405</u> 187	<u>2</u> 2	<u>159</u> 165	<u>0</u> 0
Cross-Merriman 7-8	103	<u>0</u> 103	<u>0</u> 5	<u>0</u> 25	<u>0</u> 73	Webster	393	<u>258</u> 135	<u>122</u> 68	<u>118</u> 56	<u>18</u> 11	Russell	290	<u>181</u> 102	<u>10</u> 0	<u>167</u> 87	<u>12</u> 5
Croft-Mendrickson 7-8	50	<u>0</u> 50	<u>0</u> 3	<u>0</u> 45	<u>0</u> 2	Carrington	545	<u>390</u> 155	<u>20</u> 4	<u>360</u> 150	<u>10</u> 1	1/3 Walsh	138	<u>123</u> 53	<u>115</u> 30	<u>8</u> 5	<u>11</u> 1
Mendrickson K-5	170	<u>143</u> 27	<u>8</u> 3	<u>113</u> 23	<u>17</u> 1							Croft-Maloney 7-8	103	<u>0</u> 103	<u>0</u> 5	<u>0</u> 11	<u>0</u> 73
1/3 Walsh	376	<u>266</u> 110	<u>134</u> 56	<u>60</u> 38	<u>52</u> 26							Maloney	379	<u>332</u> 40	<u>12</u> 4	<u>45</u> 8	<u>110</u> 107
Washington	536	<u>350</u> 186	<u>17</u> 6	<u>273</u> 144	<u>70</u> 43												
TOTALS	4502	<u>2838</u> 1664	<u>386</u> 231	<u>2119</u> 1421	<u>343</u> 184	TOTALS	3747	<u>2436</u> 1311	<u>521</u> 329	<u>1823</u> 945	<u>92</u> 32	TOTALS	3839	<u>2576</u> 1263	<u>437</u> 215	<u>1761</u> 1000	<u>136</u> 105

East End Middle School Minority Enrollment
Percentage -- 29.9

North End Middle School Minority Enrollment
Percentage -- 27.5

West End Middle School Minority Enrollment
Percentage -- 30.4

MICROFILM

MAY 15 1975

NEW HAVEN

FILED
MAY 15 10 47 AM '75
U.S. DISTRICT COURT
NEW HAVEN, CONN.

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,
Plaintiff

VS.

CIVIL ACTION NO. 13,465

THE BOARD OF EDUCATION OF
WATERBURY, CONNECTICUT,
ET AL,

Defendants

RULING ON MOTION TO INTERVENE

This school desegregation case under 42 U.S.C. § 2000c-6 was commenced in October of 1969, with the plaintiff United States of America's complaint essentially alleging discrimination against Negro and Puerto Rican elementary school students in the operation of the City of Waterbury's public school system. Trial of that disputed claim was rendered unnecessary by ultimate entry of a consent decree on June 8, 1973, prohibiting discrimination on the basis of "race, color, religion, or national origin", requiring municipal "efforts to provide a program . . . adequate to meet the special educational needs of the non-English speaking students . . . in the Waterbury school system", and directing formulation of a specific plan to

"achieve the greatest amount of desegregation possible, considering the practicalities, and . . . in such a manner that the burden of desegregation does not fall more heavily upon students of one race or national origin than upon students of another race or national origin."

RECEIVED

MAY 16 1975

45
Corporation Counsel's Office

The consent order expressly contemplated a further hearing on implementation, at least absent the parties' joint endorsement of a plan for the Court's approval. The need for hearing is still uncertain; although defendants have proposed a desegregation plan, plaintiff has not completed evaluation of its merits and defendants concede that they have not yet furnished sufficient data to enable plaintiff to reach a firm opinion.

Seeking intervention as parties plaintiff at this stage of the proceedings are the South End Education Committee, an "unincorporated organization of Puerto Rican parents and community leaders" in Waterbury, and sixteen individual parents "of Puerto Rican or descent" with children in Waterbury public schools, who basically contend that defendants' suggested plan would unduly burden the Hispanic community and give inadequate attention to bilingual educational needs. Neither plaintiff nor defendants object to limited intervention, and the present applicants expressly disclaim any need or desire to reopen the consent decree, their attention being exclusively focused on the unresolved issue of proper remedy.

While the proposed intervening complaint is formally cast in terms more appropriate for the initial pleading of an independently commenced civil rights action, patterned in significant respects after the government's original complaint, adjudication of the "liability" allegations of prior denial of equal protection as set forth in the "first claim for relief" is accordingly not contemplated, and the inclusion of class action allegations may seemingly be disregarded "since any equitable relief to which [intervening] plaintiffs may be entitled would benefit all persons similarly situated", Bridgeport

Guardians, Inc. v. Members of the Bridgeport Civil Service Commission, 354 F. Supp. 778, 783 (D. Conn.), aff'd in part and remanded in part on other grounds, 482 F.2d 1333 (2 Cir. 1973). Genuinely at stake is only the applicants' interest in participating in the assessment of remedial measures implementing the Court's outstanding order, with their particular concerns as mentioned above detailed under the heading of a "second claim for relief".

An unconditional right to intervene is asserted pursuant to Rule 24(a)(2), Fed. R. Civ. P., but applicants do not question adequacy of the government's representation through the point of the consent decree, and no settled position on aspects of defendants' plan found objectionable by applicants has been officially adopted by plaintiff; in this actual current posture of the case, considering the government's scope of duty as plaintiff in litigation of this sort, even the most liberal standard for testing intervention as of right by a showing "that representation . . . 'may be' inadequate", Trbovich v. United Mine Workers of America, 404 U.S. 528, n. 10 at 538 (1972), can hardly be thought satisfied by abstract speculation as to possible future conflict. If correctly viewed as permissive, however, full intervention on the now open question of remedy appropriate to effectuate the 1973 order cannot in the light of the existing parties' leisurely conduct of this final stage of suit be regarded as either untimely or a development which would "unduly delay or prejudice the adjudication of the rights of the original parties", cf. Rule 24(b), Fed. R. Civ. P. Moreover, such intervention is quite limited by its own terms, and to attempt a catalogue of

further particularized restrictive conditions at the outset may prove both improvident and of little ultimate benefit. Assuming prompt cooperation in bringing applicants up to date through access to information previously developed, duplication of effort can be avoided or minimized; fresh discovery need not be excessively burdensome or prolonged, cf. Rule 26(c), Fed. R. Civ. P., and there is of course no guarantee from the present state of the record in any event that conclusive disposition of the action would be achieved in more summary fashion absent substantial participation by the applicants for intervention.

The instant motion to intervene is accordingly hereby granted pursuant to Rule 24(b)(2), Fed. R. Civ. P., and the proposed intervening complaint may be filed by the Clerk forthwith; provided, that the consent order entered herein on June 8, 1973 shall continue in full force and effect, and no claim, defense or question resolved thereby may be reopened. The original and intervening parties are to expedite such inquiry as may be necessary to evaluate defendants' proposed plan and, failing agreement as to its sufficiency in its existing or any modified form, to claim with dispatch the hearing contemplated by the Court's prior decree in order "to determine whether the plan substantially complies with the provisions" of the 1973 consent order.

Dated at New Haven, Connecticut, this 6th day of May 1975.

Arthur W. Lerner
United States Magistrate

SO ORDERED

John F. [Signature]
Senior United States District Judge

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
Plaintiff	:	
	:	
v.	:	
	:	
THE BOARD OF EDUCATION OF	:	
WATERBURY, CONNECTICUT, ET AL	:	CIVIL ACTION NO. 13,465
	:	
Defendants	:	
	:	
SOUTH END EDUCATION COMMITTEE,	:	
ET AL	:	
	:	
Plaintiff-Intervenors	:	

MOTION RE SECOND SUPPLEMENT TO CONSENT ORDER

1. A Consent Order was entered, in the instant school desegregation case, on June 7, 1973, per Order of Honorable Thomas F. Murphy, United States District Judge. Counsel for the defendants and counsel for the plaintiff, United States of America, (hereinafter called original plaintiff) noted their approval of the Consent Order on same.

2. Paragraph 9 (set forth on Page 6 of the said Consent Order) states: "The plan described in paragraph 2, above, shall be filed by January 15, 1974, and served upon the plaintiff."

3. On January 14, 1974 the defendant, The Board of Education of Waterbury, Connecticut, voted as follows:

"VOTED: The Waterbury Board of Education recommends submission to the United States District Court for the district of Connecticut Plan H with the notation that we are ready to implement the Feeder Plan in the East End sector.

"The Board of Education reserves the right to make modifications in all sectors in accordance with population shifts within the city."

4. On January 16, 1974 at 8:30 A.M. the "First" Supplement to Consent Order dated January 15, 1974 was filed in the United States District Court, New Haven, Connecticut together with an attachment thereto consisting of 12 pages labeled and identified as the "Plan H Proposal".

5. On February 6, 1974 Ms. Frances J. Consiglio, Deputy in Charge, United States District Court, District of Connecticut, New Haven, Connecticut, returned to John F. Phelan, Esquire, counsel for the defendants, the original of the said January 15, 1974 "Supplement to Consent Order" with the notation that Judge Murphy requested that the said Supplement be returned "....for signatures of all of the consenting parties...." and in addition said Deputy in Charge suggested to counsel that Judge Murphy "would also like you to prepare an endorsement for him, (perhaps you can type the proposed order on page two of the Supplement)."

6. Subsequent to that date the counsel for the original plaintiff, and for the defendants have had a great deal of correspondence and two or three meetings concerning the said Plan H Proposal as submitted.

7. On June 6, 1975 the defendants, through counsel, submitted to original plaintiff's counsel an updated Plan H - dated April, 1975, consisting of ten sheets including pupil enrollment as of October 1, 1974 in each of the elementary schools

and in the Wallace Middle School . Attached hereto and made a part hereof for the said updated (as of April, 1975) Plan H Proposal.

8. On or about April 7, 1975 the plaintiff-intervenor, South End Education Committee, et al, filed a Motion to Intervene as party plaintiffs and an Intervenor's Complaint.

9. Subsequent to a hearing held in the United States District Court, District of Connecticut at New Haven on April 28, 1975 before the Honorable Arthur Latimer, Magistrate, this Court, Thomas F. Murphy, Senior United States District Judge, on May 6, 1975 ordered that the ruling of Magistrate Latimer of that date be confirmed. Said ruling of Magistrate Latimer decreed that the Motion to Intervene of the said South End Education Committee, et al, should be granted pursuant to Rule 24(b) (2) of the Federal Rules of Civil Procedure.

10. The defendants have this date filed a Motion to Modify Paragraph 4 of the "Order" portion of the said June 7, 1973 Consent Order, which Paragraph reads as follows: "The plan shall specify new attendance zones for students residing in the West End area to be effective upon the completion of the West End Middle School or September, 1975, at the latest, in such a manner that student assignments will be consistent with Paragraph 1, above."

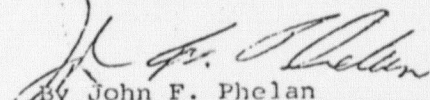
11. The attached updated April, 1975 Plan H Proposal contains as an element thereof the one year postponement in the desegregation of the West End Attendance Zones as proposed in the said attached Motion to Modify Paragraph 4 of the said Order portion of the said Consent Order.

12. Since plaintiff-intervenors have not participated in the discussions concerning, and the reasons for, the said requested one year postponement and since the original plaintiff, has not consented, in all the aspects of the said updated April, 1975 Plan II Proposal, this Second Supplement to Consent Order does not contain signatures of all consenting parties.

WHEREFORE, the defendants respectfully request that this Honorable Court schedule a hearing, at which all interested parties may appear, in order to determine whether this Honorable Court will accept this Second Supplement to Consent Order, as proposed by defendants; and the defendants so pray.

Dated at Waterbury, Connecticut this 22nd. day of July, 1975

DEFENDANTS, THE BOARD OF EDUCATION
OF WATERBURY, CONNECTICUT ET AL


By John F. Phelan

Their Attorney

ORDER

The above Motion Re Second Supplement to Consent Order having been filed in this court on _____ it is hereby
O R D E R E D that oral argument on same shall be heard at the
United States Magistrate's Chambers, New Haven, Connecticut
(432-2103) on _____, 1975 at _____

Sylvester A. Markowski
Clerk

PLAN H PROPOSAL

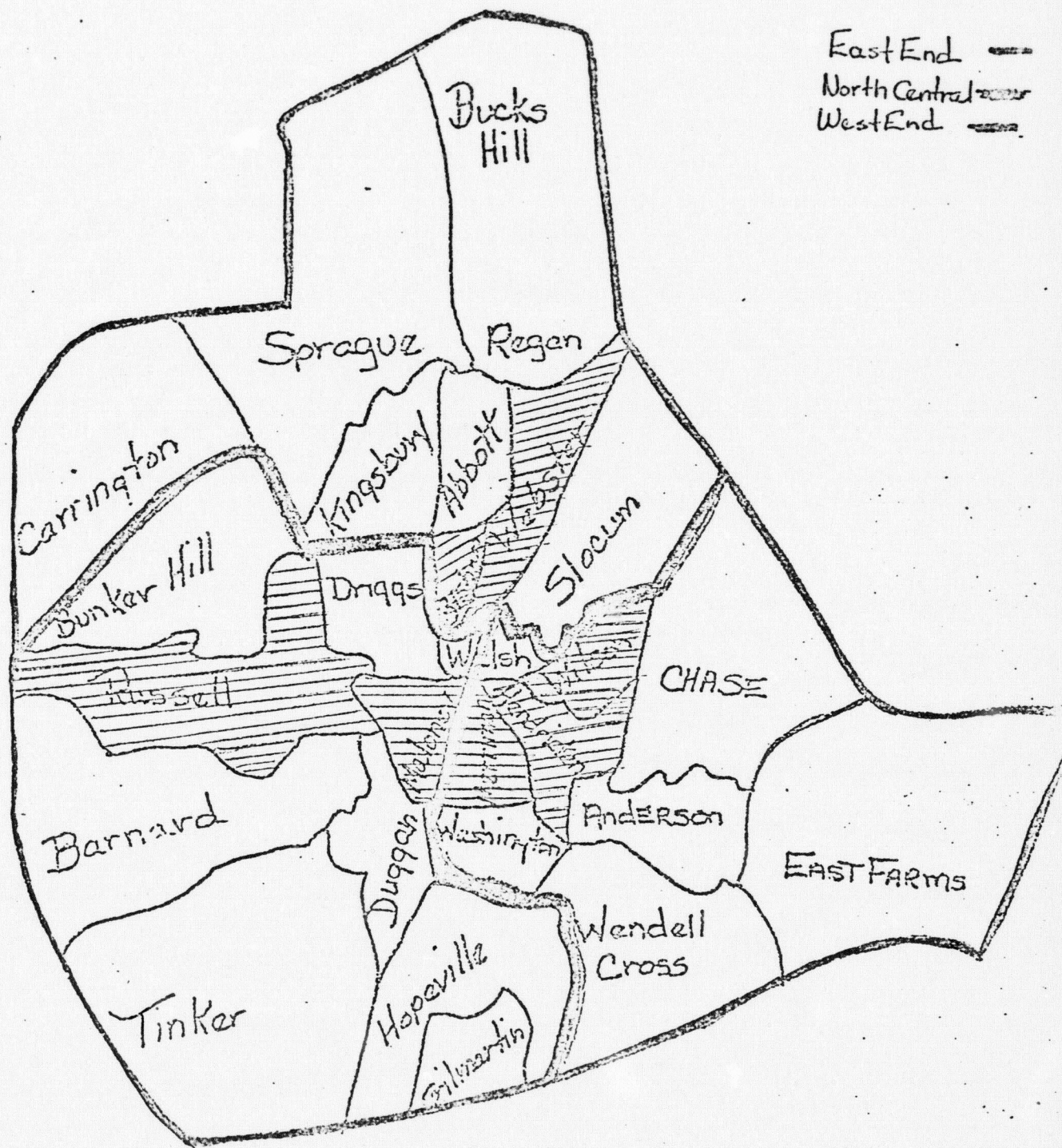
April, 1975 Updating

TABLE OF CONTENTS

Board of Education Statement	1
Map - East End=Red, West End=Blue, North End=Green	2
Plan <u>H</u> - Middle School Feeder Plan	3
Recommended East End Procedures	4
Recommended West End Procedures	5
Recommended North End Procedures	6
Proposed Pupil Enrollment - K-5 East End 1974	7
Proposed Pupil Enrollment - K-5 West End 1975	8
Proposed Pupil Enrollment - K-5 North End 1977	9
Pupil Enrollment - October 1, 1974	10

PLAN H

The Waterbury Board of Education recommends submission to the United States District Court for the district of Connecticut Plan H with the notation that we are ready to implement the Feeder Plan in the East End sector; the Board of Education reserves the right to make modifications in all sectors in accordance with population shifts within the city.



East End ---
North Central ---
West End ---

/// School facility
phased out

PLAN H
MIDDLE SCHOOL FEEDER PLAN

<u>East End</u>		<u>North End</u>		<u>West End</u>	
2/3 Walsh	120	Sprague	267	Driggs	203
Chase	326	Bucks Hill	207	Bunker Hill	173
East Farms (P)	0	Regan	0	Hopeville	146
East Farms (U)	276	Carrington	155	Gilmartin	84
Anderson	87	Kingsbury	188	Tinker	187
Cross	101	Abbott	101	1/3 Walsh	60
Hendricken	27	Slocum	187	Russell	102
Wilson	126	Bishop	71	Barnard	107
Merriman	32	Webster	135	Duggan	63
Croft-Merriman	103			Maloney	40
Croft-Hendricken	50			Croft-Maloney	103
Washington	<u>186</u>				
	1434		<u>1311</u>		<u>1268</u>

Procedures Implemented in East End

September, 1974

1. Wilson children (with the exception of 8th graders) are transferred as follows:

Wallace Middle School	- (6-7th graders)
Chase	- (K-5th graders)
Cross	- (K-5th graders)
East Farms Primary	- (K-5th graders)
East Farms Upper	- (Grade 1 - Grade 5)
Anderson	- (K-5th graders)

2. One-third of the 6-7-8th grade Walsh district students (62 children) are attending Walsh until the opening of the West End Middle School in September, 1976 (see West End Procedures). The remaining 6-7-8th graders attend the Wallace Middle School. One-third of the K-5 grade Walsh district students (138 children) are attending Walsh School until vacancies, created by the opening of the West End Middle School, occur in West End elementary schools.
3. Hendricken district is eliminated and incorporated into the Walsh district. (K-5 students attend Walsh, 6-8th graders attend Wallace Middle School).
4. East Farms Primary has become a K-5 school; East Farms Upper has become a Grade 1-5 school.
5. Merriman district has been incorporated into the following K-5 districts:

Washington	17
Chase	55
Cross	62
East Farms Upper	7
East Farms Primary	18

Kindergarten and first grade children from the Merriman district are eligible to enter the Merriman Follow Through Program.

6. Croft School continues as a 6-7-8th grade school for Maloney district children until the opening of the West End Middle School. Hendricken and Merriman children, previously assigned to Croft, attend the Wallace Middle School.

Recommended West End Procedures

September, 1976

The following pupil statistics are based on October, 1974 registration.

1. Close Croft as a 6-7-8 grade addition to Maloney upon the opening of the West End Middle School.
2. Re-draw the Bunker Hill, Driggs and Russell districts so that:
 - a) Russell may be closed as a K-5 facility;
 - b) Approximately 150 Driggs children will be included in the expanded Bunker Hill district;
 - c) The Russell pupil population will be included in the expanded Driggs district.
3. Transport 1/3 of Walsh School students as follows:
 - 62 - 6-7-8 grade children to West End Middle School
 - 100 - K-5 grade children to Tinker
 - 38 - K-5 grade children to Hopeville
4. Close Maloney (K-5) School. Children will be re-assigned as follows:
 - 75 - to Barnard School
 - 45 - to Hopeville School
 - 113 - to Duggan School

Recommended North End Procedures

1. Upon completion of the West End Middle School children from Bishop School district currently bused to Russell and Barnard (K-8) will be bused to Sprague and Carrington*. Children from Bishop district currently bused to Abbott and Kingsbury will continue to be bused to these two schools.
2. Upon completion of the North End Middle School, Bishop children will be bused to Abbott, Kingsbury, Sprague and Carrington. Sixth, seventh, and eighth grade pupils will be transferred to the North End Middle School.
3. Upon completion of the North End Middle School, Bucks Hill and Regan will become K-5 schools.
4. Upon completion of the North End Middle School, the Webster School facility will be closed and children from the district will be assigned to the Bucks Hill and Regan Schools.

* Because, at that time, Russell will be closed and Barnard will be a K-5 school only.

Pupil Enrollment

K-5
East End
September, 1974

School	B	W	SS	Total
Anderson	20	193	4	217
Chase	58	596	34	688
Cross	20	195	38	253
East Farms Primary	50	396	27	473
East Farms Upper	72	274	21	367
Merriman Follow Through	133	76	74	283
Wilson Follow Through	228	104	26	358
Washington	22	271	97	390
2/3 Walsh *	<u>161</u>	<u>106</u>	<u>91</u>	<u>358</u>
	764	2111	412	3387

1/3 of Walsh district will be in the West End Sector K-5 and Middle Schools as of the September, 1976 opening of the West End Middle School. Currently the 218 children are enrolled at Walsh -

62 6-7-8th grade students
156 K-5 grade students

Projected Pupil Enrollment

West End K-5 Schools

September, 1976

The projections are based on pupil enrollment as of 10/1/74. Assuming the pupil population figures remain constant the following enrollments are anticipated upon the opening of the West End Middle School and implementation of the "West End Procedures".

School	B	W	SS	Total
Maloney	-	-	-	-
Barnard	7	213	70	290
Duggan	16	110	123	249
Hopeville	58	235	51	344
Tinker	91	434	11	536
1/3 Walsh	-	-	-	-
Bunker Hill	5	324	24	433
Driggs	152	252	49	453
Russell	-	-	-	-
Gilmartin	<u>46</u>	<u>129</u>	<u>12</u>	<u>187</u>
	455	1697	340	2492

Projected Pupil Enrollment

North End K-5 Schools

The projections are based on pupil enrollment as of 10/1/74. Assuming the pupil population figures remain constant, the following enrollments are anticipated upon the opening of the North End Middle School - High Complex and the implementation of "North End Procedures".

School	B	W	SS	Total
Webster	-	-	-	-
Abbott	44	177	1	222
Bishop Follow Through	149	101	18	268
Bucks Hill	138	257	24	419
Regan	28	149	8	185
Slocum	152	108	14	274
Sprague	58	370	34	462
Carrington	35	357	13	405
Kingsbury	<u>31</u>	<u>294</u>	<u>13</u>	<u>338</u>
	635	1813	125	2573

PUPIL ENROLLMENT - OCTOBER 1, 1974

EAST END						NORTH END						WEST END					
School	Total Enrollment	K-5 6-8	B H	W W	SS SS	School	Total Enrollment	K-5 6-8	B B	W W	SS SS	School	Total Enrollment	K-5 6-8	B B	W W	SS SS
Malone H.S.	1418	0	0	0	0	Abbott	355	222	44	177	1	Barnard	319	215	5	200	8
		1418	298	1002	156			133	25	103	4			104	8	92	3
Anderson	217	217	20	193	4	Bishop	268	268	149	101	18	Bunker Hill	438	265	7	272	4
		0	0	0	0			0	0	0	0			152	7	143	2
Chase	685	685	30	596	34	Bucks Hill	383	193	25	159	9	Duggan	204	138	9	100	27
		0	0	0	0			190	27	153	8			66	8	45	11
Cross	253	253	22	193	38	Gloucom		74	152	108	14	Driggs	619	410	195	155	52
		0	0	0	0			91	101	76	4			209	103	67	19
East Town (P)	473	473	50	396	27	Sprague		462	58	370	34	Gilmartin	281	187	46	129	12
		0	0	0	0			266	38	222	0			94	20	70	4
East Town (W)	367	367	72	273	21	Kingsbury	529	338	31	294	13	Hopeville	406	261	20	235	6
		0	0	0	0			191	29	155	7			145	10	131	3
Gilmartin	281	281	133	76	74	Rogan	185	185	28	149	8	Tinker	637	436	11	424	1
		0	0	0	0			0	0	0	0			201	4	196	1
Malone	355	355	228	104	26	Webster	365	225	113	95	15	Russell	307	195	35	143	10
		0	0	0	0			139	71	63	4			112	25	80	5
1/3 Walsh	356	356	161	186	91	Carrington	566	405	35	357	13	1/3 Walsh	218	156	71	45	40
		0	0	0	0			161	9	147	4			62	52	2	8
Washington	390	390	22	271	97							6-7-8		0	0	0	0
		0	0	0	0							Croft-Maloney	99	99	6	22	71
														233	4	37	152
												Maloney	233	0	0	0	0
														2517	403	1748	359
TOTALS	4705	3287	764	2107	412	TOTALS	3834	2573	498	1854	125	TOTALS	3761	1244	243	686	127
		1418	298	1002	156			1261	300	957	37						

East End Middle School Minority Enrollment
Percentage - 33.0%

North End Middle School Minority Enrollment
Percentage - 25.0%

West End Middle School Minority Enrollment
Percentage - 30.1%

AUG 24 1976

Corporation Counsel's Office
UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FILED

AUG 26 1976

U.S. DISTRICT COURT
DISTRICT OF CONNECTICUT

----- x

UNITED STATES OF AMERICA, :
Plaintiff, :
and :
SOUTH END EDUCATION COM- : CIV. 13,465
MITTEE, et al., :
Intervenors, :
against :
BOARD OF EDUCATION OF WATER- :
BURY, CONNECTICUT, et al., :
Defendants. :
----- x

MEMORANDUM

MURPHY, D.J.

The Attorney General of the United States instituted this school desegregation case against the Board of Education of Waterbury,* Connecticut, and others in October, 1969, pursuant to a provision of the Civil Rights Act of 1964 (42 U.S.C. § 2000c-6). The complaint alleged discrimination against Negro and Puerto Rican elementary school pupils in that city's public school system.

As of March, 1975, the Waterbury public elementary school system consisted of 35 schools, including high schools, middle schools, follow-through schools and outside Pre-K, alternative and special service schools, with a total enrollment

* Waterbury was founded in 1674 as Mattatuck and admitted as a town named Waterbury in the Colony of Connecticut in 1686. For many years it was known as the brass center of the world. The Federal census of 1970 fixed the population at 108,033.

1 of 17,654 pupils of which 12,267 were white, 3,612 were
2 Negro, and 1,735 with Spanish surnames. In addition, there
3 were 31 American Indians and 9 Orientals (Exhibit 10,
4 Attachment 1).

5 The pretrial order defined the principal issues
6 as "*,* * whether the Waterbury Board of Education's poli-
7 cies and practices with respect to school construction and
8 pupil assignment have constituted the imposition of a
9 de jure segregation and whether there has been purposeful
10 discrimination in the municipal allocation of educational
11 resources between predominantly white and predominantly
12 Puerto Rican Schools." (Neither Waterbury nor Connecticut
13 were operating public schools under a constitutional or
14 statutory provision which mandated or permitted racial
15 segregation.) The Connecticut Constitution, Art. 1, § 20
16 (1965), provides:

17
18 "No person shall be denied the equal pro-
19 tection of the law nor be subjected to segre-
20 gation or discrimination in the exercise or
21 enjoyment of his civil or political rights
22 because of religion, race, color, ancestry or
23 national origin."

24 Waterbury Board of Education's principal defense was that
25 the concentration of minorities in some of its schools is
26 the result of residential and neighborhood patterns and not
27 the result of action or policies of the school officials or
28 the Board of Education.

29 Prior to trial and on June 7, 1973, the parties
30 resolved their differences and entered into a consent decree.
31 This order summarized the various allegations and defenses
32 and outlined the steps that the defendants had taken in
altering some of the student assignment patterns, namely,
two of the schools with the highest concentrations of black

1 and Puerto Rican students were closed as regular schools and
2 established to house students in a special educational pro-
3 gram called FOLLOW-THROUGH. Also, implementation of a
4 program entitled "Project Concern" has resulted in a number
5 of black students attending school in surrounding substan-
6 tially all-white districts, and the defendants were imple-
7 menting the first stage of a school construction program
8 to establish three middle-school complexes each of which
9 would house students in grades 6-8. The first of such
10 complexes, East End Middle School, was scheduled to open
11 in September, 1974. In addition to those changes, the
12 defendants have undertaken a program to insure the provi-
13 sion of equal educational opportunities to the non-English
14 speaking students enrolled in the school system. The
15 preamble concluded: -
16

17 "All parties agree that the completion of
18 the proposed middle-school complexes, plus a re-
19 constitution of the zone lines of the K-5 schools
20 [kindergarten to 5th grade] so as to obtain the
21 greatest amount of desegregation possible, would
22 make the operation of the school system at that
23 time in complete compliance with federal law
24 concerning desegregation of public schools. * * *

25 "The United States agrees that upon com-
26 pletion of each new middle school and the imple-
27 mentation of the student assignment plan in
28 Attachment A, hitherto, or an equally effec-
29 tive plan, the schools in Waterbury will be
30 satisfactorily desegregated. The defendants
31 are committed to the implementation of the
32 concepts contained in Attachment A hereto,
or an equally effective plan. The parties
agree, however, that entry of the following
order will resolve the remaining issues in
this case and make a trial unnecessary."

33 The decretal part of the consent order restrained
34 the defendants from:

35 " * * * discriminating against any per-
36 son, because of his race, color, religion,
37 or national origin, in the operation of the
38 Waterbury school system; * * * that the de-
39 fendants will devise, adopt and implement a

1 student assignment plan for the elementary (K-8)
2 students attending school in the system which
3 conforms with the following provisions and
4 schedules:

5 "1. The plan shall achieve the greatest
6 amount of desegregation possible, considering
7 the practicalities, and shall be implemented in
8 such a manner that the burden of desegregation
9 does not fall more heavily upon students of one
10 race or national origin than upon students of
11 another race or national origin.

12 "2. The plan shall specify the attendance
13 areas to be served by each of the proposed mid-
14 dle schools, which shall contain grades 6, 7
15 and 8, and shall also specify the zones for
16 the K-5 schools which will feed into each of
17 the said proposed middle schools and the
18 school buildings which will be utilized to
19 house the K-5 students in each zone.

20 "3. The plan shall provide for imple-
21 mentation of those provisions related to the
22 East End Middle School and the K-5 feeder
23 schools in that attendance area upon the
24 opening of the said East End Middle School
25 in September, 1974.

26 "4. The plan shall specify new attend-
27 ance zones for students residing in the West
28 End area to be effective upon the completion
29 of the West End Middle School or September,
30 1975, at the latest, in such a manner that
31 student assignments will be consistent with
32 paragraph 1, above.

"5. The plan shall specify new attend-
ance zones for students residing in the North-
Central area to be effective upon the comple-
tion of the North-Central Middle School or
September, 1977, at the latest, in such a
manner that student assignments will be con-
sistent with paragraph 1 above.

"6. In the event that defendants fail
to comply substantially with the provisions of
paragraphs, 3, 4 and 5, above (relative to the
date of the implementation of a desegregation
plan for the respective affected Middle School
attendance zones), then the defendants shall
implement reasonable interim measures which
will desegregate the schools in the said
affected Middle School attendance zones so
that student assignments will be consistent
with paragraph 1 above, unless the defendants
make a timely application for modification of
this Order.

1 "7. While the specific zone lines and
2 utilization of buildings proposed in Attach-
3 ment A hereto, are not required, the results
4 projected under that plan together with the
5 previous policy statements of the defendants
6 concerning student assignment, such as the
7 statement of August 15, 1966, shall serve as
8 guides in determining whether the final plan
9 substantially conforms to paragraph 1, above.

10 "8. The plan shall contain projections
11 of student enrollment showing the expected
12 enrollment of white, black and Puerto Rican
13 students for each school under the plan sub-
14 mitted pursuant to paragraph 2, above.

15 "9. The plan described in paragraph 2,
16 above, shall be filed by January 15, 1974, and
17 served upon the plaintiff.

18 "10. If the parties cannot agree upon
19 the sufficiency of the plan, a hearing will be
20 scheduled to determine whether the plan sub-
21 stantially complies with the provisions of
22 this Order.

23 "IT IS FURTHER ORDERED that the defendants
24 shall continue to make efforts to provide a
25 program which is adequate to meet the special
26 educational needs of the non-English speaking
27 students enrolled in the Waterbury school
28 system. To that end, the defendants shall,
29 from year to year, evaluate the extent to which
30 such needs are being met and shall provide the
31 necessary resources to meet fully the stu-
32 dents' needs as determined by those studies."

On June 6, 1975, the defendants, Waterbury Board
of Education, filed Plan H dated "April 1975," which it felt,
and still feels, complies with the consent order.

On May 6, 1976, we entered an order permitting
intervention as parties plaintiffs South End Education Com-
mittee, an "unincorporated organization of Puerto Rican
parents and community leaders" in Waterbury, and sixteen
individual parents "of Puerto Rican origin or descent" who
alleged that they had children in Waterbury public schools,
all of whom argued that the defendants' Plan H unduly
burdens the Hispanic community and gives inadequate attention
to bilingual educational needs. Their complaint, which was

1 permitted to be filed, was patterned in significant respects
2 after the Government's original complaint.

3 Intervention was granted ~~on May 6, 1973~~ pursuant
4 to Rule 24(b)(2), Fed.R.Civ.P., but it was specifically
5 provided that no claim or defense or question resolved by
6 the consent order could be reopened, and it was further
7 ordered that the parties, including the intervening parties,
8 were to expedite the evaluation of the defendants' proposed
9 Plan H, "and failing agreement as to its sufficiency in its
10 existing or any modified form, to claim with dispatch the
11 hearing contemplated by the Court's prior decree 'to determine
12 whether the Plan substantially complies with the provisions'"
13 of the 1973 consent order.

14 Thereafter, the defendants made two motions with
15 reference to the consent decree. The first was to amend
16 paragraph 4 of such order so as to change the effective date
17 for the Plan specifying new attendance zones for students
18 residing in the West End so as to conform with the anticipated
19 completion of the West End School in March, 1976. The second
20 motion was for an order approving the Plan H dated April, 1975
21 relating to each of the elementary schools and the Wallace
22 Middle School and fixing a date for a hearing at which all
23 interested parties may be heard. Surprisingly, the Govern-
24 ment's only objection to Plan H was, it would delay the
25 desegregation of the West End (K through 5 grade school dis-
26 tricts) until September, 1976, the new date when the West
27 End Middle School District would be ready to receive students.

28 We modified the order as requested on October 23,
29 1975.

30 A hearing date on Plan H was agreed to by the par-
31
32

1 ties after the intervenors had completed their discovery, and
2 it was had on June 9, 11, 16 and 17, 1976. At the hearing
3 the intervenors, and not the Government, pulled the laboring
4 oar. The reason that the Government has changed its posi-
5 tion and now supports the objections of the intervenors is,
6 as stated in their pretrial brief (it has failed to file a
7 post-trial brief in the time allowed):

8 " * * * the United States has not, prior to
9 the submission of this memorandum, objected to
10 the implementation of Plan H. However, recently
11 completed discovery has demonstrated, in our
12 view, that the asserted non-racial reasons pre-
13 sented by the Board for the adoption of Plan H,
14 and its consequent adverse impact on the His-
15 panic community were, in fact, pretextual.
16 Further, it appears that its adoption was predi-
17 cated on impermissible racial, as opposed to
18 educational, considerations and therefore should
19 be rejected by this Court."

20 The principal issue at the hearing and the one to
21 which most of the testimony and evidence was addressed was:
22 Does Plan H conform to the consent decree, and particularly
23 to the West End portion of Plan H? This is significantly
24 different than the issue outlined in the pretrial order.
25 At that time, with a trial contemplated, the general issue was
26 the constitutional issue of purposeful discrimination.

27 It will be recalled that the consent decree ordered
28 the defendants to devise a student assignment plan for the
29 elementary (K-8) students attending school in the system
30 which would achieve the greatest amount of desegregation
31 possible considering the practicalities, and shall be imple-
32 mented in such a manner that the burden of desegregation does
not fall more heavily upon students of one race or national
origin than upon students of another race or national origin.
The consent decree further provided, in paragraph 7, that
"while the specific zone lines and utilization of buildings

1 proposed in Attachment A are not required, the results pro-
2 jected under that Plan, together with the previous policy
3 statements of the defendants concerning student assignment,
4 shall serve as guides in determining whether the final Plan
5 substantially conforms to paragraph 1 above."

6
7 , Plan A attached to the consent order provided for
8 the construction of three middle schools in three sections
9 of the city, and the consolidation of all 6th, 7th and 8th
10 grades in those schools. As far as the elementary schools
11 (K-5) were concerned, they were to be desegregated by changing
12 school district lines, closing some schools, and busing of
13 those children to other schools.

14 The Government and the intervenors agree that Plan H
15 follows the outline of Plan A except that in the West End por-
16 tion Plan H does not close the predominantly white schools,
17 Barnard and Duggan (K-5 schools), but closes Maloney, and
18 withdraws Croft from the Plan. The result is that the three
19 schools which were predominantly Hispanic - Merriman in the
20 East End, Maloney and Croft in the West End - would be closed,
21 and there would be no school left in the predominantly his-
22 panic neighborhood. As a result, the burden of desegrega-
23 tion, they argue, falls more heavily on minorities in the
24 West End portion of Plan H.

25 An inspection of the sketch in Plan H giving the
26 outlines of the new school districts will disclose that
27 Maloney and Merriman are contiguous in the very middle of
28 the city and are to be phased out. Maloney, however, is in
29 the East End section of the city and Merriman in the West End,
30 and together have the greatest number of Hispanic-named
31 children, Merriman having 179 and Maloney 282. The next
32 highest is Croft, which has 114. Croft has been phased out

1 and does not even appear on the sketch, but before the phasing
2 out it was in the West End.

3 Exhibit 10 (prepared by Superintendent of Schools
4 Dr. Michael F. Wallace on March 18, 1975) shows in part
5 (Attachment 5) the following results of Plan H:

	<u>White</u>	<u>Black</u>	<u>Hispanic</u>
6 Number of children bused	439	586	814
7 Percentage of each racial			
8 and ethnic group bused	5.5%	22.5%	65.3%

9 Assuming that the figures quoted above show that
10 the burden of desegregation falls more heavily on minorities
11 (they were not contested by the defendants at the hearing),
12 does it follow that the defendant School Board members
13 intended, by the adoption of Plan H, to discriminate?
14

15 We are satisfied that we do not have to decide
16 this difficult constitutional question usually posed in
17 de jure segregation cases, i.e., did the Board of Education
18 of Waterbury, by its proposed Plan H, have as its purpose
19 and intent to segregate its elementary school children?

20 In Washington v. Davis, ___ U.S. ___, 44 U.S.L.W.4789,
21 4792, 4793 (June 7, 1976), Mr. Justice White restates the
22 de jure rule as announced in Keyes v. School District No. 1,
23 Denver, Colo., 413 U.S. 189, 205, 208 (1973), as follows:

24 "The school desegregation cases have also
25 adhered to the basic equal protection principle
26 that the invidious quality of a law claimed to
27 be racially discriminatory must ultimately be
28 traced to a racially discriminatory purpose.
29 That there are both predominantly black and
30 predominantly white schools in a community is
31 not alone violative of the Equal Protection
32 Clause. The essential element of de jure
segregation is 'a current condition of segre-
gation resulting from intentional state action
***, the differentiating factor between
de jure segregation and so-called de facto
segregation *** is purpose or intent to
segregate.

* * * *

1 "Necessarily, an invidious discriminatory
2 purpose may often be inferred from the totality
3 of the relevant facts, including the fact, if it
4 is true, that the law bears more heavily on one
5 race than another. * * * Disproportionate
6 impact is not irrelevant, but it is not the sole
7 touchstone of an invidious racial discrimination
8 forbidden by the Constitution. Standing alone,
9 it does not trigger the rule * * * 'that racial
10 classifications are to be subjected to the
11 strictest scrutiny and are justifiable only by
12 the weightiest of considerations.'" (Emphasis
13 ours.)

14 We can, however, and do find that Plan H violates
15 this Court's order of June 6, 1973 - the consent decree -
16 because the burden of desegregation falls more heavily on
17 minorities in the West End portion of Plan H.

18 The holding in Wright v. Council of the City of
19 Emporia, 407 U.S. 451 (1972), which Washington v. Davis,
20 supra, recently reaffirmed, falls foursquare within the
21 situation here in Waterbury.

22 supra, at 4793,
23 In Washington v. Davis, Mr. Justice White explains
24 that Wright

25 " * * * also indicates that in proper circum-
26 stances the racial impact of a law, rather
27 than its discriminatory purpose, is the
28 critical factor. That case involved the divi-
29 sion of a school district. The issue was
30 whether the division was consistent with an
31 outstanding order of a federal court to deseg-
32 regate the dual school system found to have
33 existed in the area. The constitutional
34 predicate for the District Court's invalida-
35 tion of the divided district was 'the enforce-
36 ment, until 1969 of racial segregation in the
37 public school system of which Emporia had
38 always been a part.' Id., at 459. There was
39 thus no need to find 'an independent consti-
40 tutional violation.' Ibid. Citing Palmer v.
41 Thompson [403 U.S. 217 (1971)], we agreed with
42 the District Court that the division of the
43 district had the effect of interfering with
44 the federal decree and should be set aside."

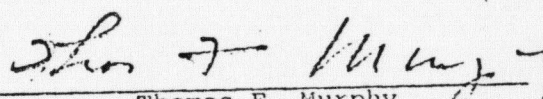
45 Accordingly, that part of Plan H with reference
46 to the West End we hold to be in violation of the consent
47 decree and we will sign an order to that effect, granting to

1 the defendants a reasonable time to submit an alternative
2 plan after consultation with the Government and the inter-
3 venors.

4 We have not addressed ourselves to the question
5 of standing of the intervenors, raised by the defendants
6 after, the trial.

7 It is argued that since there was no testimony
8 by any intervenor relative to what rights were being invaded
9 or whether the children were in attendance at the public
10 schools in Waterbury, it was not a case or controversy as
11 far as the intervenors are concerned. Since the United
12 States is a party plaintiff, whether the intervenors have
13 standing is moot.

14 Let this Memorandum stand as our findings of
15 fact and conclusions of law pursuant to Fed.R.Civ.P. 52.
16

17
18 
19 Thomas F. Murphy
20 Senior United States District Judge

21
22 Dated: Waterbury, Ct., August 20, 1976.
23
24
25
26
27
28
29
30
31
32

RECEIVED

SEP 2 1976

Corporation Counsel's Office

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

MICROFILM

SEP 1 1976
NEW HAVEN

UNITED STATES OF AMERICA,

Plaintiff,

SEP 1 10 42 AM 1976
Civil Action

U.S. DISTRICT COURT
NEW HAVEN No. 13,465

AND
SOUTH END EDUCATION COMMITTEE, et al.,

ORDER

13,465

Intervenors,

-against-

THE BOARD OF EDUCATION OF WATERBURY,
CONNECTICUT, et al.,

Defendants.

X

This matter having come on for hearing on June 9, 11, 16 and 17, 1976, and the Court having considered the testimony and the exhibits submitted into evidence and the Court in its Memorandum of August 20, 1976, having made findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure, and

After a conference on August 31, 1976 with all of the attorneys on the form of an order to be entered herein, it is

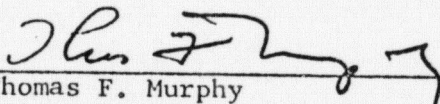
ORDERED, that the defendants, their agents, employees and attorneys and all persons in active concert with them are hereby enjoined from implementing that portion of Plan H which transfers the K-5 children from the Maloney School District to some other school; and it is further

ORDERED, that the defendants, their agents, employees and attorneys and all persons in active concert with them

are hereby enjoined to prepare an alternative desegregation plan for the City of Waterbury in good faith consultation with all parties. Such alternative desegregation plan shall be consistent with the Consent Order of June 7, 1973 and this Court's Memorandum of August 20, 1976, and shall be submitted to the Court on or before December 1, 1976. The other parties may submit any counter proposals to the Court on or before December 15, 1976; and it is further

ORDERED that all parties may submit affidavits and or memoranda on or before September 20, 1976 on two issues relating to the awarding of (1) costs and disbursements and (2) attorneys' fees.

DATED: August 31, 1976


Thomas F. Murphy
United States District Judge

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,

Plaintiff

AND

SOUTH END EDUCATION COMMITTEE, ET AL

Intervenors

-against-

THE BOARD OF EDUCATION OF WATERBURY
CONNECTICUT, et al

Defendants

CIVIL ACTION NO. 13,465

MOTION RE THIRD SUPPLEMENT TO CONSENT ORDER

1. A Consent Order was entered, in the instant school desegregation case, on June 7, 1973, per Order of Honorable Thomas F. Murphy, United States District Judge. Counsel for the defendants and counsel for the plaintiff, United States of America, (hereinafter called original plaintiff) noted their approval of the Consent Order on same.

2. Paragraph 9 (set forth on Page 6 of the said Consent Order) states: "The plan described in paragraph 2, above, shall

be filed by January 15, 1974, and served upon the plaintiff."

3. On January 14, 1974 the defendant, The Board of Education of Waterbury, Connecticut, voted as follows:

"VOTED: The Waterbury Board of Education recommends submission to the United States District Court for the district of Connecticut Plan H with the notation that we are ready to implement the Feeder Plan in the East End sector.

"The Board of Education reserves the right to make modifications in all sectors in accordance with population shifts within the city."

4. On January 16, 1974 at 8:30 A.M. the "First" Supplement to Consent Order dated January 15, 1974 was filed in the United States District Court, New Haven, Connecticut together with an attachment thereto consisting of 12 pages labeled and identified as the "Plan H Proposal".

5. On February 6, 1974 Ms. Frances J. Consiglio, Deputy in Charge, United States District Court, District of Connecticut, New Haven, Connecticut, returned to John F. Phelan, Esquire, counsel for the defendants, the original of the said January 15, 1974 "Supplement to Consent Order" with the notation that Judge Murphy requested that the said Supplement be returned ".....for signatures of all of the consenting parties...." and in addition said Deputy in Charge suggested to counsel that Judge Murphy "would also like you to prepare an endorsement for him, (perhaps you can type the proposed order on page two of the Supplement)."

6. Subsequent to that date the counsel for the original plaintiff, and for the defendants have had a great deal of correspondence and two or three meetings concerning the said Plan H Proposal as submitted.

7. On June 6, 1975 the defendants, through counsel,

submitted to original plaintiff's counsel an updated Plan H - dated April, 1975, consisting of ten sheets including pupil enrollment as of October 1, 1974 in each of the elementary schools and in the Wallace Middle School.

8. On or about April 7, 1975 the plaintiff-intervenor, South End Education Committee, et al, filed a Motion to Intervene as party plaintiffs and an Intervenor's Complaint.

9. Subsequent to a hearing held in the United States District Court, District of Connecticut at New Haven on April 28, 1975 before the Honorable Arthur Latimer, Magistrate, this Court, Thomas F. Murphy, Senior United States District Judge, on May 6, 1975 ordered that the ruling of Magistrate Latimer of that date be confirmed. Said ruling of Magistrate Latimer decreed that the Motion to Intervene of the said South End Education Committee, et al, should be granted pursuant to Rule 24(b) (2) of the Federal Rules of Civil Procedure.

10. On or about July 22, 1975 the defendants filed a Motion entitled "Motion Re Second Supplement to Consent Order". In this Motion the defendants requested that this Honorable Court adopt and accept the April, 1975 updating of Plan H.

11. On June 9, 11, 16 and 17, 1976, hearings were held before this Honorable Court, Thomas F. Murphy, Senior United States District Judge, at the Waterbury Court House in connection with the said defendants' Motion Re Second Supplement to Consent Order.

12. On August 20, 1976 Judge Murphy entered his Memorandum of Decision in connection with said Motion, which was filed on August 23, 1976.

13. As a supplement to said August 20, 1976 Memorandum of Decision, Judge Murphy entered an Order dated August 31, 1976

which stated in part: "ORDERED, that the defendants, their agents, employees and attorneys and all persons in active concert with them are hereby enjoined to prepare an alternative desegregation plan for the City of Waterbury in good faith consultation with all parties. Such alternative desegregation plan shall be consistent with the Consent Order of June 7, 1973 and to this Court's Memorandum of August 20, 1976, and shall be submitted to the Court on or before December 1, 1976.....". Subsequent to the said August 31st. Order, counsel for the defendants and counsel for the intervenors and counsel for the government have had several meetings and extensive correspondence in connection with the said August 31st. Order. At, at least, two of the meetings the President of the defendant Board of Education participated.

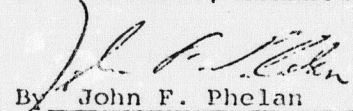
14. Attached hereto is the Board's plan for a revised Plan H as it relates to the "West End" sector of the City, with particular regard to the Maloney School District.

15. Said August 31, 1976 Order also stated: "The other parties may submit any counter-proposals to the Court on or before December 15, 1976;....".

16. WHEREFORE, the defendants respectfully request that this Honorable Court schedule a hearing, subsequent to December 15, 1976, at which all interested parties may appear, in order to determine whether this Honorable Court will accept this Third Supplement to Consent Order, as proposed by defendants; and the defendants so pray.

Dated at Waterbury, Connecticut this 1st. day of December, 1976.

DEFENDANTS, THE BOARD OF EDUCATION
OF WATERBURY, CONNECTICUT, ET AL


By John F. Phelan
Their Attorney

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,

Plaintiff

AND

SOUTH END EDUCATION COMMITTEE, ET AL

Intervenors

-against-

THE BOARD OF EDUCATION OF WATERBURY
CONNECTICUT, et al

Defendants

CIVIL ACTION NO. 13,465

WATERBURY BOARD OF EDUCATION'S

DECEMBER 1, 1976 UPDATING OF PLAN H

DECEMBER, 1976 PLAN H UPDATE

Effective September, 1977, the Board proposes the following amendment to Plan H:

A - Basic Plan -

(1) The Maloney District Public School pupils, scheduled to be in kindergarten through the third grades, shall attend the Maloney School;

(2) The public school Maloney District students scheduled to attend the fourth and fifth grades shall attend the Barnard and/or the Duggan Schools;

(3) The Barnard and Duggan Schools shall remain K-5 schools within their present attendance districts.

B - Alternate Plan -

If the Intervenor and/or the original plaintiff, the United States of America, objects to the bussing of the fourth and fifth grade Maloney District students to the Barnard and/or Duggan Schools, then the Board proposes that the Maloney School be retained as a K-5 school and the Board will commit itself to make additional capital improvements to the Maloney School plant; for example only, and by way of illustration, the installation of a new gymnasium floor will be explored.

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,

Plaintiff

AND

SOUTH END EDUCATION COMMITTEE, ET AL:

Intervenors

-against-

THE BOARD OF EDUCATION OF WATERBURY,
CONNECTICUT, et al

Defendants

CIVIL ACTION NO. 13,465

MOTION TO MODIFY CONSENT ORDER

1. A Consent Order was entered, in the instant school desegregation case, on June 7, 1973, per Order of Honorable Thomas F. Murphy, United States District Judge. Counsel for the defendants and counsel for the plaintiff, United States of America, (hereinafter called original plaintiff) noted their approval of the Consent Order on same.

2. Paragraph 5 of the "Order" portion of the said

June 7, 1973 Consent Order reads as follows: "The plan shall specify new attendance zones for students residing in the North-Central Area to be effective upon the completion of the North-Central Middle School or September, 1977, at the latest, in such a manner that student assignments will be consistent with Paragraph 1, above."

3. Paragraph 6 of the "Order" portion of the said June 7, 1973 Consent Order reads as follows: "In the event that defendants fail to comply substantially with the provisions of paragraphs 3, 4 and 5, above (relative to the date of the implementation of a desegregation plan for the respective affected Middle School attendance zones), then the defendants shall implement reasonable interim measures which will desegregate the schools in the said affected Middle School attendance zones so that student assignments will be consistent with paragraph 1 above, unless the defendants make a timely application for modification of this Order."

4. On or about July 22, 1975 the defendants filed a "Motion to Modify Consent Order" dealing with the request by the defendants to delay, until September, 1976, the implementation of Paragraph 4 of the "Order" portion of the said June 7, 1973 Consent Order.

5. The said July 22, 1975 Motion, and the said Paragraph 4 of the "Order" portion of the Consent Order deal with the "West End" portion of the three major school attendance areas of the City of Waterbury. The Motion addressed itself to the fact that a new West End Middle School was then under construction and that the West End Middle School would not be completed and

ready for full occupancy until September, 1976 and thus the Motion requested a one year delay in the implementation of the mandates of the said Paragraph 4 of the said "Order" portion of the Consent Order.

6. On October 23, 1975, this Honorable Court, Thomas F. Murphy, Senior United States District Judge, granted defendants' July 22, 1975 Motion to Modify Consent Order re Paragraph 4 of the said "Order" portion of the Consent Degree; all as per Judge Murphy's Memorandum as of that date, filed on October 24, 1975.

7. A new North End Middle School is presently under construction, (together with a new High School to replace the Wilby High School) on a large tract of land in the North End portion of the City located off of Bucks Hill Rd. The new Middle School-High School Complex is located adjacent to, and immediately north-easterly of, the Bucks Hill Elementary School site.

8. In July, 1976 the City entered into a contract with Murray Walter, Inc. of Binghamton, New York, as a general contractor, for the construction of the said new North End Middle School-High School Complex for an overall contract price of \$18,024,000.00.

9. At the present time construction is under way and the site work has been completed and the foundation and footings have been completed and the steel beams and girders are presently being put in place for the framework of the schools.

10. The said contract with the said Murray Walter, Inc. which was dated July 23, 1976 provides that the general contractor shall "do and complete all work required by this agreement within

780 calendar days."

11. The defendant Board of Education and the defendant Mayor have apprised the general contractor of the provisions of the Consent Order in the instant matter and every effort is being made to insure completion of the Middle School-High School by September, 1978.

12. Upon completion and availability for use of the said new North-Central Middle School the provisions and mandates of Paragraph 5 of the "Order" portion of the said June 7, 1973 Consent Order will be effected.

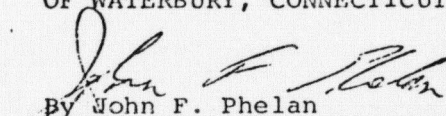
13. The defendants assert that it is neither workable nor feasible nor educationally sound to implement any interim desegregation plan for the "North-Central" area prior to the completion of the new Middle School for that area since some of the existing K-8 schools in the said "North-Central" sector of the City are inadequate for the current educational program and would be totally inadequate for a Middle School curriculum. As of date all of the sixth, seventh and eighth grade children in the other two sectors of the City (that is the "East End" and the "West End") are participating in, and receiving their education at, the new Middle Schools. It has been the experience in Waterbury that a Middle School Program must be housed in a facility which has been designed, and built, for Middle Schools and the program cannot be implemented in the traditional K-8 school setting.

WHEREFORE, defendants pray that this Honorable Court

amend Paragraph 5 of the "Order" portion of the said June 7, 1973 Consent Order as follows: The plan shall specify new attendance zones for students residing in the North-Central area to be effective upon completion of the North-Central Middle School, or September, 1978, at the latest, in such a manner that student assignments will be consistent with paragraph 1, above.

Dated at Waterbury, Connecticut this 1st. day of December, 1976.

DEFENDANTS, THE BOARD OF EDUCATION
OF WATERBURY, CONNECTICUT ET AL


By John F. Phelan
Their Attorney

ORDER

The above Motion to Modify Consent Order having been filed in this court on _____ it is hereby O R D E R E D that oral argument on same shall be heard at the United States Magistrate's Chambers, New Haven, Connecticut (432-2103) on _____, 1976 at

Sylvester A. Markowski
Clerk

CERTIFICATION

I hereby certify that I mailed via United States Postal Service, postage prepaid, a copy of the foregoing Motion to Modify Consent Order, this 1st. day of December, 1976.

Leigh Manasevit, Esq.
Education Section, Civil Rights Division
United States Department of Justice
Washington, D.C. 20530

Kenneth Kimerling, Esq.
Puerto Rican Legal Defense & Education Fund, Inc.
95 Madison Ave., New York, New York 10016

Alice Bussiere, Esq.
New Haven Legal Assistance Association
413 Howard Ave.
New Haven, Connecticut 06519

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,

Plaintiff,

and

SOUTH END EDUCATION COMMITTEE,
et al.,

Intervenors,

v.

BOARD OF EDUCATION OF WATERBURY,
CONNECTICUT, et al.,

Defendants.

CIVIL ACTION
NO. 13,465

RECEIVED

DEC 17 1976
Corporation Counsel's Office

RESPONSE OF THE UNITED STATES TO THIS COURT'S
ORDER OF SEPTEMBER 1, 1976 AND COUNTER PRO-
POSAL TO DEFENDANT'S MOTION RE THIRD SUPPLE-
MENT TO CONSENT ORDER

This Response and Counter Proposal of the United
States is submitted in accordance with the Order of this
Court of September 1, 1976.

* * *

Alternative Proposals

Familiarity with local conditions place the defendants in the position of being the best qualified parties to develop a desegregation plan for the City of Waterbury. Prior orders of this Court in accordance with the law on this subject have properly placed this burden on the defendants. See Swann v. Charlotte-Mecklenburg, Supra.

However, if the defendants default in their obligation, it is the duty of the Courts to order the implementation of an appropriate desegregation plan.

At the present time we would like to note, for purposes of illustration only, that there is at least one feasible method of desegregating the Maloney school. This involves a cluster of the contiguous Barnard, Duggan and Maloney schools. Although an ethnic breakdown of numbers of students in each grade would be necessary to show how each school in the cluster would be composed, a basic plan might involve the assignment of all first and second graders from Barnard, Duggan and Maloney to Barnard, all third and fourth graders to Maloney, and all fifth and sixth

graders to Duggan. The number of grades assigned to each school could be altered as necessary for capacity. The results of such a plan, as shown below, would be an over-all student body that is 45% minority, a percent that would be approximately reflected at each school in the cluster.

<u>School</u>	<u>Capacity</u> ^{*/}	^{**/} Enrollment 1976-1977				<u>% Minority</u>
		<u>B</u>	<u>W</u>	<u>SSA</u>	^{***/} <u>T</u>	
Barnard	400	10	188	11	210	10.5
Duggan	475	9	82	40	134	38.8
Maloney	425	4	27	172	203	86.7
Total Cluster	1300	23	297	223	547	45%

The preceding statistics illustrate an apparently feasible method of desegregating Maloney school. The

^{*/} Plaintiff's exhibit 10 - hearing June 9, 1976.

^{**/} Defendants letter of October 22, 1976 - attachment.

^{***/} Totals may be greater than the sums of the groups due to the presence of some "other minorities".

defendants have offered no alternative which desegregates this school and does not place an undue burden on minority students.

In light of the defendants' failure to produce an acceptable desegregation plan for the elementary schools in Waterbury an appropriate resolution for this situation might be for this Court to appoint one or more special masters and assign them the task of producing a desegregation plan for these schools. This is a proper resolution to this type of situation and the cost of the compensation of the masters could properly be charged to the Defendants. Morgan v. Kerrigan, 530 F.2d 401 (C.A. 1, 1976), Cert. den. ____ U.S. _____. "The district court has broad discretion in fixing the amount of such compensation and in determining which of the parties to charge" Morgan v. Kerrigan, at 427.

Conclusion

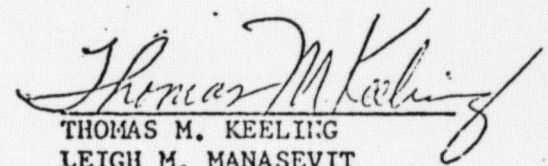
For the foregoing reasons the United States suggests that the defendant's submission of their December, 1976 Plan H should be found to be a violation of the September 1, 1976 Order of this Court requiring them to submit a plan for the desegregation of the Waterbury elementary schools without placing an undue burden on any minority group. In any event this plan

should be found to be deficient and in noncompliance with the Court's Order. Further, the United States suggests that the Court consider the appointment of one or more special masters with the assignment of developing a plan for the prompt desegregation of the Waterbury elementary schools.

PETER C. DORSEY
United States Attorney

Respectfully submitted,

J. STANLEY POTTINGER
Assistant Attorney General



THOMAS M. KEELING
LEIGH M. MANASEVIT
Attorneys
Department of Justice
Washington, D. C. 20530
202/739-2858

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,

Plaintiff,

and

SOUTH END EDUCATION COMMITTEE,
et al.,

Plaintiff-Intervenors,

v.

THE BOARD OF EDUCATION OF
WATERBURY, CONNECTICUT, et al.,

Defendants.

CIVIL ACTION
NO. 13,465

The United States, plaintiff herein, respectfully
submits the attached proposed plan, for the Desegrega-
tion of the Maloney School, prepared by Warren B. Buford
as a counter-proposal to the Defendants' plan of
December 1, 1976 in response to this Court's scheduling
Order of January 10, 1977, as modified. The plan is
accompanied by a supporting affidavit of Warren B. Buford.

Dated: 2/11/77

Respectfully submitted,

PETER L. DORSEY
United States Attorney

J. STANLEY POTTINGER
Assistant Attorney General

Leigh M. Manasevit
THOMAS M. KIELING
LEIGH M. MANASEVIT
Attorneys
Department of Justice
Washington, D. C. 20530

RECEIVED

FEB 14 1977

Corporation Counsel's Office

94

PROPOSED PLAN FOR THE DESEGREGATION OF THE MALONEY SCHOOL

Prepared by:

WARREN B. BUFORD
Dean
Pepperdine University-Southeast

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,
Plaintiff,

and

SOUTH END EDUCATION COMMITTEE,
et al.,

Plaintiff-Intervenors,

v.

THE BOARD OF EDUCATION OF
WATERBURY, CONNECTICUT, et al.,

Defendants.

CIVIL ACTION
NO. 13,465

The United States, plaintiff herein, respectfully submits the attached proposed plan, for the Desegregation of the Maloney School, prepared by Warren B. Buford as a counter-proposal to the Defendants' plan of December 1, 1976 in response to this Court's scheduling Order of January 10, 1977, as modified. The plan is accompanied by a supporting affidavit of Warren B. Buford.

Dated: 2/11/77

PETER L. DORSEY
United States Attorney

Respectfully submitted,

J. STANLEY POTTINGER
Assistant Attorney General

Thomas M. Keeling
THOMAS M. KEELING
LEIGH M. MANASEVIT

Background

Several remedies have been offered formally (and several informally discussed) as means for eliminating the racial identifiability of Maloney School (K-5).

The Defendant's have proposed two methods for desegregating Maloney. In their updated Plan II (December 1976), the Waterbury Board of Education proposed Plan "A" (the "Basic Plan") and Plan "B" (the "Alternate Plan"). The former called for removing the fourth and fifth grades from Maloney and assigning them to the Barnard and/or Duggan Schools. Attendance in grades K-3 in these schools would remain unaffected. The "Alternate Plan" called for "additional capital improvements to the Maloney School plant."

These proposals were discussed and objected to by the United States in their Response and Counter Proposal submitted in accordance with the Court's Order of September 1, 1976. Additionally, the United States offered, for purposes of illustration, a sample remedy calling for the cluster of Maloney with Duggan and Barnard. This arrangement would require cross-pairing of the schools in the new consolidated

zone which would result, for example, in all third-grade children attending the same school. The same would be true for all other grades except for kindergarten, in which case children would attend kindergarten under present zones.

The illustration provided by the United States, above, is a more thorough remedy than those offered by the School Board in the December 1976 Plan, but may not be as administratively simple and economical as the alternative proposed in this plan, primarily because grade level configurations are changed in the example given by the United States' Response when such change may not be necessary.

Before considering the recommendation contained herein for remedying the racially identifiability of Maloney School, it may be useful to look at three other theoretical alternatives:

(1) Close Duggan and pair Maloney and Barnard.

This would create a single zone in which all K-2, for example, would attend Maloney; likewise, all 3rd - 5th grade pupils would be assigned to Barnard. The result would be a 45% minority enrollment in each school.

- (2) Close Barnard and pair Maloney and Duggan.

The result achieved through this theoretical remedy corresponds in kind and substance to #(1), above.

- (3) Close Barnard and Duggan; use Maloney (K-5) for entire zone and satellite classrooms at St. Ann's.

All students in the consolidated zone would be assigned to Maloney (K-5). To alleviate the capacity problem caused by this remedy, up to eight (8) classrooms might be rented from St. Ann's, a parochial school located across the thoroughfare (E. Clay) from Maloney.

The objections to the three theoretical alternatives identified above are as follows:

- (1) Compared to Barnard, Duggan is a superior facility and should not be closed. Pairing should be used only when more practical remedies are not available.
- (2) There is no basic objection to closing Barnard because of its condition relative to Duggan. However, pairing may not be necessary in the

presence of a more practical and educationally sound alternative.

- (3) A more practical, less extreme alternative, exists than that which requires the closing of two facilities, one of which (Duggan), in sound condition and in excellent repair, and the resulting need to rent space from a parochial school. Of the three above theoretical alternatives, this third would result in the greatest amount of transportation required.

Recommendation

The alternative considered most administratively feasible and educationally sound involves:

Closing Barnard and reassigning pupils to Maloney, which remains K-5, and to Duggan, which also remains K-5.

This assignment can be accomplished in either of two ways:

Assignment Option I - All minority students from the former Barnard Zone and all white students bused from the Country Club Road and Chase Parkway area would be

assigned to Duggan. The remaining students, all white, would be assigned to Maloney. This option would result in the following student enrollment projections:

	<u>B(%)</u>	<u>SSA(%)</u>	<u>W(%)</u>	<u>Total</u>	<u>Capacity</u>
Maloney (K-5) ^{*/}	4 (0.1%)	172 (49.3%)	173 (49.6%)	349	425
Duggan (K-5) ^{**/}	19 (9.8%)	51 (26.3%)	124 (63.9%)	194	475
TOTAL	23 (4.2%)	223 (41.1%)	297 (54.7%)	543 ^{***/}	900

Assignment Option II - The two-school zone would be subdivided geographically creating two new, self-contained K-5 attendance zones. This option would result in the following projected student enrollments:

	<u>B(%)</u>	<u>SSA(%)</u>	<u>W(%)</u>	<u>Other (%)</u>	<u>Total</u>	<u>Capacity</u>
Maloney (K-5))	Zone lines can be drawn by the School District so as to yield enrollment projections within 2% of each of the categories above (i.e. under Assignment Option I).					
Duggan (K-5))						
TOTAL)						

^{*/} Statistics supplied by school district contained in submission to State Department of Education (October 1, 1976 submission). Maloney statistics do not reflect the students in ungraded bilingual classes.

^{**/} Duggan could continue to house 43 TMR pupils not included in above projection.

^{***/} This total does not reflect three Indian students at Duggan and one Asian American at Barnard.

Rationale for the Recommendation

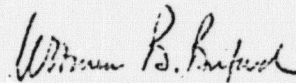
Under this preferred alternative attendance under a rationale of so-called neighborhood integrity would be preserved; children from given areas would remain together (K-5) but would be re-assigned to either Maloney or Duggan. Net travel difference is considered minimal and insignificant because while substantial numbers of students are already transported to Barnard (69 out of 210) no non-special education students are currently transported to either Maloney or Duggan. Thus even assuming that all the remaining Barnard students (141) require transportation this increase would be less than any of the other alternatives. Additionally the desirable aim of maintaining the K-5 configuration for both Maloney and Duggan, consistent with all other schools in the Waterbury Public School District, would be achieved. In short, this alternative provides a practical and educationally sound remedy which does not require the application of valid, yet more extreme techniques, such as pairing. This alternative also takes advantage of a need to use more effectively the two better repair than Barnard and more appropriately appointed (e.g. swimming pool at Duggan and carpeting at Maloney). All

place schools are at present significantly under capacity; this remedy relieves this condition, thereby resulting in significant savings to the school district effected by the closing of Barnard and making more maximum use of Maloney and Duggan.

It should be emphasized that this remedy is offered as the most administratively feasible, practical and educationally sound for the short run. It is recommended that the School Board take immediate steps to develop a long-range plan for this South End area in collaboration with the Waterbury City Planning Office and with the Waterbury Redevelopment Agency. Such planning should result not only in cost-effective means for educating K-5 children in this general area, but should result in a plan which would prevent racial identifiability in the long run.

Date: 2/4/77

Prepared and submitted by:



WARREN B. BUFORD
Dean
Pepperdine University-Southeast

APPENDIX I

The following non-special education students are transported into the Barnard School, according to statistics furnished by Mr. Norman Feitelson, the principal of Barnard.

<u>Area of Residence</u>	<u>Number</u>	
	<u>White</u>	<u>Black</u>
Country Club Road and Chase Parkway	42	0
Lakeside Blvd.	2	0
Platte Mills	18	0
Bishop School Area	1	6

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,

Plaintiffs,

and

SOUTH END EDUCATION COMMITTEE,

et al.,

Plaintiff-Intervenors,

VS.

THE BOARD OF EDUCATION OF

WATERBURY, CONNECTICUT, et al.

Defendants.

CIVIL ACTION NO. 13,465

POSITION OF PLAINTIFF-INTERVENORS

REGARDING AN ALTERNATIVE

DESEGREGATION PLAN

Plaintiff-Intervenors and members of their class have met and have discussed the Proposed Plan for the Desegregation of the Maloney School prepared by Warren B. Buford and submitted by the United States. During the preparation of the plan, plaintiff-intervenors were in contact, through counsel, with the United States and made their concerns known to the government. They are satisfied that their interests were taken into consideration in the development of the proposed plan, and they support the plan as submitted with the following qualifications:

RECEIVED

FEB 16 1977

Corporation Counsel's Office

104 (a)

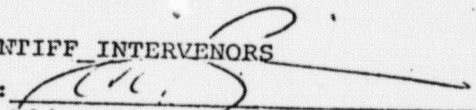
A. Immediate Plan

The immediate plan proposed by the United States provides for the use of Maloney School as a K-5 facility. Defendants, in their plan H update and in previous statements, have acknowledged that the Maloney School building requires additional improvements. The defendants⁰ must commit themselves to do any repair or provide any maintenance necessary to assure that the Maloney plant will be a safe and effective school building. Such improvements should include, but not be limited to, repair or replacement of present gymnasium floor, and repair of leaking roofs.

B. Long Range Plan

A long range plan should include a commitment by the defendants that the next capital construction project undertaken by the city will be a new elementary school in the present Maloney School district. Plaintiff-Intervenors concur with previous statements made by Defendants concerning the inadvisability of using Maloney on a long term basis.

PLAINTIFF INTERVENORS

BY: 

Alice Bussiere

Their Attorney

P.O. Box 7266

New Haven, CT 06519

Telephone: 203-787-2153

104.(6)

IN THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA, : CIVIL ACTION NO. 13,465
Plaintiff :
and :
SOUTH END EDUCATION COMMITTEE, et al, :
Plaintiff-Intervenors, :
V. :
THE BOARD OF EDUCATION OF :
WATERBURY, CONNECTICUT, et al, :
Defendants. :

REVISED MOTION RE THIRD SUPPLEMENT TO CONSENT ORDER

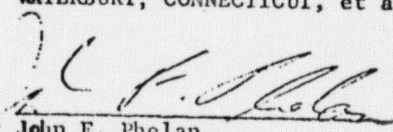
The Defendants herewith submit a revised plan, Attachment A, concerning Barnard, Maloney and Duggan Districts. Per information given to the undersigned Counsel by the President of the School Board, the Attachment A Plan supersedes, and supplants, the December 1976 Plan H up-date filed with this Court on or about December 1, 1976.

Dated February 15, 1977.

Respectfully submitted,

DEFENDANTS
THE BOARD OF EDUCATION OF
WATERBURY, CONNECTICUT, et al

By


John F. Phelan
Their Attorney
Juris No. 66300

February 15, 1977

At the meeting of the Board of Education held Monday, February 14, 1977, the following vote was passed:

VOTED:

Upon a motion by Commissioner Brodeur, seconded by Commissioner Lanza, it was voted that the three plans that have been submitted be rejected, further that the three elementary schools, Barnard, Maloney, Duggan be retained as K-5 and that the three schools be considered one contiguous school district on an open enrollment basis.

ROLL CALL VOTE

2 - No 6 - Yes

Dr. Bannon	No
Comsr. Beckett	Yes
Comsr. Brodeur	Yes
Comsr. Duffy	No
Comsr. Devino	Yes
Comsr. Kilborn	Yes
Comsr. Lanza	Yes
Comsr. Lombardo	Yes

CERTIFICATION

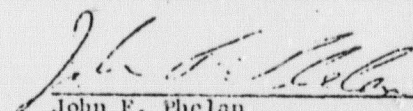
I hereby certify that I mailed via United States Postal Service, postage prepaid, a copy of the foregoing Revised Motion, this fifteenth day of February, 1977 to the following:

Joe Montwell, Esquire
Waterbury Legal Aid & Reference
Service, Inc.
61 Field Street
Waterbury, Connecticut 06702

Leigh Manasevit, Esquire
Education Section, Civil Rights Division
United States Department of Justice
Washington, D.C. 20530

Kenneth Kimerling, Esquire
Puerto Rican Legal Defense and
Education Fund, Inc.
95 Madison Avenue
New York, New York 10016

Alice Bussiere, Esquire
New Haven Legal Assistance Association
413 Howard Avenue
New Haven, Connecticut 06519


John F. Phelan

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

----- x
UNITED STATES OF AMERICA, :
Plaintiff :
and :
SOUTH END EDUCATION COMMITTEE, :
ET AL, Plaintiff- :
Intervenors :
Against :
THE BOARD OF EDUCATION OF :
WATERBURY, CONNECTICUT, ET AL, :
Defendants. :
----- x

Civil Action No
13,465
February 15, 1977

DEPOSITION OF WARREN B. BUFORD

A p p e a r a n c e s :

FOR THE PLAINTIFF:

LEIGH MANASEVIT, ESQUIRE
Department of Justice
Room 7730
Washington, D. C. 20530

Cunningham & Smith
Reporting Service
1637 ASYLUM AVENUE
WEST HARTFORD, CONNECTICUT 06117

1 A p p e a r a n c e s : (Continued)
2

3 FOR THE PLAINTIFF-INTERVENORS:
4

5 ALICE BUSSIERI
6 New Haven Legal Assistance Association
7 413 Howard Avenue
8 New Haven, Connecticut 06519
9

10 FOR THE DEFENDANTS:
11

12 JOHN PHELAN, ESQUIRE
13 Corporation Council
14 236 Grand Street
15 Waterbury, Connecticut
16
17
18
19
20
21
22
23
24
25

1 . . . The following is the deposition of WARREN B.
2 BUFORD, taken at the request of the Plaintiff in the above-
3 entitled action, wherein United States of America is Plaintiff
4 and the South End Education Committee, Et Al are
5 Plaintiff-Intervenors and the Board of Education of Water-
6 bury, Et Al are Defendants, pending the United States
7 District Court for the District of Connecticut, pursuant
8 to Notice of Deposition and Rule 30 of the Federal Rules
9 of Civil Procedure, before Linda Y. Holda, a Notary Public
10 within and for the State of Connecticut, at the offices of
11 the Waterbury Legal Aid and Reference Service, 61 Field
12 Street, Waterbury, Connecticut, on Tuesday, February 15,
13 1977 at 10:15 o'clock, a.m., at which time counsel appeared
14 as hereinbefore set forth and also present were Lewis
15 Hutchison, Dr. Michael Wallace and Richard Wood . . .

16
17
18 STIPULATIONS

19 MR. MANASEVIT: The purpose of this depo-
20 sition is for the United States to take the
21 testimony of Doctor Buford for the purpose of
22 submitting it to the Magistrate on or before
23 February 23rd. This will be an offer of testimony
24 as evidence and accordingly we intend to conduct
25 this deposition, as much as possible, as if it

1 were an evidentiary hearing and abide by the
2 rules of evidence, and, consider objections as
3 if they were being ruled upon by the Court.

4 We will waive the formalities as to the
5 proof of the authority of the Notary Public and
6 sufficiency of notice.

7 We will waive the reading and signing of
8 the deposition.

9
10 * * *

11 WARREN B. BUFORD, J. R.,

12 of 121 North Hermitage Road, Beaufort, South
13 Carolina, called as a witness of the Plaintiff,
14 the United States of America, was duly cautioned
15 and sworn by Linda Y. Holda, a Notary Public within
16 and for the State of Connecticut, was examined and
17 testified upon his oath as follows:

18 DIRECT EXAMINATION

19 BY MR. MANASEVIT:

20 Q Doctor Buford, state your employment, please?

21 A I am Dean of Pepperdine University, Southeast,
22 Parris Island, South Carolina.

23 Q For how long have you held that position?

24 A I have held the position of Dean for one year.

25 Q What was your employment prior to assuming the

110
Cunningham & Smith

1 position of Dean?

2 A I was Director of Pepperdine University,
3 Beaufort Campus.
4

5 Q For what years did you hold that position?

6 A From 1974 until 1975 or 1976. February of 1976.

7 Q Prior to assuming that position, what was your
8 employment?

9 A I was self-employed for a year and a consultant
10 to public schools and higher education.

11 Q What type of consulting work was that?

12 A Primarily in the area of curriculum, student
13 rights, as well as problems related to school desegregation.

14 Q Would you describe your duties and responsibilities
15 as Dean of Pepperdine University, Southeast?

16 A I am responsible for the administration of 41
17 small residential centers or campuses at military locations
18 throughout the southeast sponsored jointly by Pepperdine
19 University and the Department of Defense.

20 Q What were your responsibilities and duties as
21 Director?

22 A I was directly responsible for the operation of
23 the Beaufort campus of Pepperdine.

24 Q Would you give us your educational background,
25 please?

A I was graduated from high school in Roanoke,

1 Virginia in 1953; I attended Davidson College and graduated
2 from Roanoke College with A.B. in Economic and Business
3 Administration. I received a Masters Degree from the
4 University of North Carolina and my Doctorate in Education
5 from the University of North Carolina at Chapel Hill.

6 Q Have you served as a consultant to school dis-
7 tricts in the past?

8 A Yes, I have.

9 Q Would you briefly give us a run-down of the your
10 history of consulting work?

11 A I have consulted with school districts, essentially,
12 since 1963 in two broad areas: one, in curriculum and ad-
13 ministration and the second, in matters related to school
14 desegregation.

15 Q Can you recall the names of the districts that
16 you consulted in?

17 MR. PHELAN: In what area Counsel, or both?

18 MR. MANASEVIT: And, give the areas, please.

19 THE WITNESS: I have listed those in my
20 affidavit that I submitted to the United States.

21 BY MR. MANASEVIT:

22 Q Would you refer to that now?

23 A On page 3 of the affidavit dated February 8th,
24 1977, there is a listing of school districts for whom I have
25 done work and , also beginning on page five is a general

1 listing by states of certain numbers of school districts
2 where I have been involved primarily in school desegregation.

3 Q Would you read through the listing of the first
4 group of school districts and explain briefly the type of
5 work that you did for them?

6 A The North Carolina Advancement School, I was a
7 consultant in curriculum and race relations; in New Hanover
8 County, South Carolina I was a consultant to the Board of
9 Education in matters relating to school desegregation and
10 curriculum plans; Education Service Center, Rocky Mountain,
11 North Carolina I served 12 school districts in the eastern
12 part of North Carolina and I consulted with them in race
13 relations and curriculum; Reno, Nevada - I was consultant
14 in curriculum and in Taos, New Mexico I was a consultant
15 in curriculum and race relations.

16 At Charlotte-Mecklenburg, North Carolina I was a
17 consultant in school desegregation and curriculum; at
18 Chapel Hill, North Carolina it was school desegregation and
19 curriculum; Philadelphia, Mississippi - school desegregation;
20 Providence, Rhode Island - curriculum; Jasper County, South
21 Carolina - school desegregation, curriculum and management
22 and planning; Jacksonville, Florida - school desegregation
23 and curriculum; Burlington, North Carolina - curriculum;
24 Wake Forest, North Carolina - race relations and curriculum;
25 Butner, North Carolina - race relations and curriculum.

1 At Boston, Massachusetts - race relations, Yazoo,
2 Mississippi - school desegregation.

3 My first experience with school desegregation began
4 in the fall of 1969 at which time I was employed by the
5 University of South Carolina part-time on a special basis
6 in the South Carolina School Desegregation Consulting Center
7 funded by Title IV of the Civil Rights Act. I was invited
8 by a colleague of mine, who is Director of the Center, to
9 work with school desegregation matters in the 30 Court-
10 Ordered Districts in Mississippi in the fall of 1969 and
11 that work lasted some six months.

12 Q Let me cut in before you go on. On your affidavit
13 you list Higher Education and Others. Would you explain
14 for each institution listed what the nature of that
15 employment was?

16 A For the University of North Carolina, from 1963
17 through 1971 I was consultant to and acted as consultant
18 at various times to the school of education, the school of
19 public health and in the program development area and in
20 the external programs for school districts in the State.

21 Mississippi State University - I assisted the
22 Title IV Center at Mississippi State University at various
23 times from 1969 thru 1971 in matters related to school
24 desegregation.

25 At St. Augustine's College in Raleigh, North

1 Carolina I worked with the office of Education to develop
2 means for identifying racial tension and in communities
3 which had experienced school desegregation in an effort to
4 predict and prevent violence which might result from racial
5 tensions.

6 The U. S. Department of Justice, I have worked in the
7 past as an expert witness in Shelby County, Tennessee and
8 Beaumont, Texas, Tuscaloosa, Alabama, Rapido Parish, Louisi-
9 anna, Jackson, Mississippi, Sumter, South Carolina, and,
10 presently I am acting as a witness in the Ferndale,
11 Michigan case and a voting rights case in East Baton Rouge,
12 Louisiana.

13 For the American Civil Liberties Union I served as
14 a witness in a case in York, South Carolina.

15 For the American Friends Service Committee I have
16 been involved particularly in 1970 thru 1973 on an advisory
17 basis in several school related problems most of which have
18 been related to school desegregation and race relations.

19 The North Carolina Department of Youth Development -
20 I served as a consultant at maximum security penal
21 institutions for minors in North Carolina for both educational
22 and race relations.

23 From 1969 to the present I have served as a con-
24 sultant and an advisor for a consortium of some 35 colleges
25 and universities in the country known as the Union for

1 Experimenting Colleges and Universities. This work has
2 involved the development of alternative under-graduate
3 programs primarily, University Without Walls and external
4 doctoral programs for the university or graduate schools.

5 At the University of Massachusetts I served as a
6 consultant to the School of Education and under-graduate
7 education.

8 Shaw University in North Carolina - I served as a
9 consultant in under-graduate education.

10 At Bemidji State College in Minnesota, I served as
11 a consultant in reorganization and redesign for the College.

12 At Skidmore College I served as a consultant in
13 under-graduate education.

14 At Roger Williams College in Rhode Island I served as
15 a consultant in under-graduate education.

16 At Howard University I served as a consultant in
17 under-graduate education and also in management for the
18 president.

19 At Morgan State College I served as a consultant
20 in under-graduate education.

21 Q Could you give us the location of these
22 institutions?

23 A Howard University is in Washington, Oregon and
24 Morgan State is in Maryland. I served as a consultant to
25 the Colegio Jacinto Trevino which was the first primarily

1 Chicano college in the country located near Brownville,
2 Texas. I served as a consultant in organization, curriculum
3 and race relations.

4 I have served at the University of South Carolina
5 outside of my employment there and primarily I have served
6 as a consultant in school desegregation, curriculum and
7 development.

8 The National Foundation for the Humanities - I have
9 served as a member of the National Foundation for the
10 Humanities for three years and as a consultant to them in
11 the development of humanities programs in public education
12 and higher education.

13 For Educational Marketing and Research, Inc., located
14 in California, I have served as a consultant in curriculum
15 materials.

16 In Wake County and Raleigh County in North Carolina
17 I served as a consultant and advisor in drug prevention
18 programs.

19 Q Are there any school districts, either elementary,
20 secondary or higher education, for which you have served as
21 a consultant which are not listed on this affidavit?

22 A I think I have mentioned Ferndale, Michigan and
23 that is not listed on the affidavit. I have mentioned
24 Boston and I have served there as a consultant in the Rox-
25 bury district. I have served as a consultant to two school

1 districts in California that are not mentioned on here.
2 One is Grass Valley, California and the other is Orange
3 County and my work there is involved in curriculum.

4 Q Is there any reason why those four districts you
5 just mentioned are not listed on this affidavit?

6 A It was an oversight on my part.

7 Q Prior to your employment as Director of Pepper-
8 dine, were you employed -- would you give your employment
9 history?

10 A Prior to that I worked with my wife for a year
11 in consulting with school districts and in writing. Prior
12 to that I was Director of the North Carolina Child Advocacy
13 Center. Prior to that I worked as a consultant to school
14 desegregation primarily in the State of North Carolina.

15 Q Can you give us the dates as close as you can
16 remember?

17 A 1972 is the date of that activity. Prior to that
18 I was employed as an Associate Professor at the University
19 of South Carolina in the School of Education and also pro-
20 gram director for several programs in under-graduate and
21 graduate education as a result of my work for the president
22 of the University.

23 Q Again, can you give us the dates?

24 A That employment began in 1969. Prior to that
25 for two years I was Chairman of the Humanities Department at

1 Sacred Heart College in North Carolina. Prior to that, I
2 was employed as a Director at the University of North
3 Carolina in Chapel Hill for 2 years. Prior to that I
4 taught public school in Asheboro, North Carolina for 1
5 year.

6 Q What year was that?

7 A Nineteen sixty-four to 1965. From 1963 to 1964
8 I was employed as a school teacher in Salisbury, North
9 Carolina for the public schools. Prior to that I was an
10 operations manager for Roanoke Broadcasters in Roanoke,
11 Virginia for a year and a half and prior to that I was a
12 reporter, a newspaper reporter.

13 The 3 years immediately prior to that I was in the
14 Army and I served with the Army Intelligence in Europe.

15 Prior to that I was in college.

16 Q Would you refer to your affidavit and see if
17 there is any employment that you have forgotten to mention?

18 A I had summer employment in 1968 and 1969 where I
19 was a visiting professor. In the summer of 1967 I worked in
20 Boston with WGBH under a grant from the National Humanities
21 Foundation. I taught public school in Roanoke County and
22 in Roanoke City in 1962 to 1963.

23 Q Would you give us a summary of your experience
24 exclusively in the area of school desegregation, including
25 the various employers that you have worked for?

1
2 A Well, my major activity in school desegregation
3 began in 1969 when I served as a consultant in assisting
4 the 30 court-ordered districts in Mississippi to fulfill
5 the court order to desegregate immediately. Parallel to
6 that experience I worked for the then Secretary of HEW,
7 Robert Fitch in designing and implementing programs for
8 school boards who were involved with carrying out court
9 orders for school desegregation.

10 I worked with the Title IV Center at the Uni-
11 versity of South Carolina assisting over 30 districts in
12 the State with school desegregation. This involved working
13 directly with school boards in training sessions, helping
14 school boards develop means for arriving at new policies
15 both in administration and curriculum; policies which would
16 compliment and support desegregation.

17 I worked in workshops with teachers and this
18 was in regard to race relations and also with students.
19 During this period of time while working as a consultant
20 in South Carolina districts, I became involved in other
21 southern states as well working with other Title IV Centers
22 based at Universities, Title IV Centers which were available
23 for offering technical assistance to school desegregation
24 districts.

25 During the summer of 1971, I supervised all of
the technical assistance under the Office of Education for

1 8 southern states and in the process became more or less
2 directly involved in specific cases in southern states
3 outside of the state in which I was residing, South
4 Carolina.

5 The first experience I had as an expert witness
6 for the Department of Justice was in Shelby County,
7 Tennessee, Memphis and this was in 1970 and 1971.

8 My experience with school desegregation has been
9 under the auspicious of Universities, the Department of
10 Justice, The American Civil Liberties Union and the American
11 Friends Service Committee and for school districts them-
12 selves.

13 Q Could you give us just a statistical summary of
14 the number of school districts you have consulted with in
15 the area of school desegregation and you can refer to your
16 affidavit.

17 A In the State of Mississippi, I was involved with
18 all 30 court-ordered school districts. In North Carolina,
19 24 school districts, in South Carolina, 34; in Georgia, 4;
20 in Louisiana, 2; Tennessee, 7; Kentucky, 4; Texas, 4; and,
21 Arkansas, 2.

22 Also, I notice as I am reading this list that I
23 have left out Alabama where I was directly involved in
24 Tuscaloosa as an expert witness and on the Birmingham case
25 was involved as a consultant, so I have omitted that, inad-

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

vertently.

Q Has any of your work ever been published?

A Yes.

Q I don't believe the affidavit lists that.

A Yes, it has. I have written two books on managing classroom behavior, one aimed at the general public school teacher and another aimed at the teacher of emotionally disturbed children.

I have written a book with another author on the rights of patients in mental health institutions. I have written a training manual on patient rights in mental health institutions. I have written a book on child advocacy. I have published a book resulting from a monograph from the government on the results of my work in measuring racial tension in communities. I have written some articles, primarily in the area of school curriculum, and I am currently working on a book with my wife on the due process rights of minors as students.

MR. MANASEVIT: Mr. Phelan, I intend to offer Doctor Buford's testimony as the testimony of an expert witness in the area of education and specifically in the area of school desegregation. Do you wish to cross examine him on his qualifications or reserve all of your cross until I have completed my direct examination?

1 MR. PHELAN: No, I think I would like to
2 ask him some questions now for my own sake.
3
4

5 CROSS EXAMINATION
6

7 BY MR. PHELAN:

8 Q Doctor Buford, in terms of your desegregation
9 experience, whether or not there has been -- as to your
10 consultant work, whether or not there has been confinement
11 in the southern states of the United States?

12 A Most of the work has been confined to the
13 south, except for Ferndale, Michigan.

14 Q Well, excepting from Ferndale, Michigan, have
15 the school district involved been district in which prior to
16 either court order or prior to voluntary action by the
17 school district or prior to a combination of court order
18 and voluntary action by the affected school district the
19 school districts have been originally on a DeJure segregated
20 basis of separation of the races by schools, separation of
21 races being in fact separated by races by facilities?

22 A DeJure, yes.

23 Q Now you mentioned Ferndale, Michigan as a district
24 north of the south, so to speak, forgive the plain words,
25 what in terms of labels was your work in Ferndale for,
desegregation or curriculum, or both?

1 A For the desegregation, the Department of Justice.

2 Q Had the Justice Department instituted legal
3 action, or don't you know?

4 A My work in that case is really just beginning and
5 as I understand is right now pending an outcome of an
6 appeal. I wish I could comment factually on the full back-
7 ground of the case, but I feel reluctant to do that because
8 I am not as familiar at this point as I would like to be
9 with all of the matters involved in the case.

10 Q Well, to your knowledge, is there litigation?
11 You said, you used the word "case"?

12 A Yes.

13 Q In the instant matter, the case is entitled:
14 United States of America, Plaintiff and South End Education
15 Committee, Plaintiff Intervenors and in that case was it
16 the United States of America rather than the phrase Justice
17 Department?

18 A Yes.

19 Q In Ferndale was it the same?

20 A Yes.

21 Q Now, when was the suit instituted or don't you
22 know that?

23 A My best recollection of that was that the suit
24 was instigated some four or five years ago. My involvement
25 has been over the passed five months when I was approached

1 by the Department of Justice to assist them.

2 Q Have you testified in a courtroom or have you
3 been deposed, had testimony taken similiar to todays
4 proceeding?

5 A No. I am scheduled to appear in Michigan in
6 March.

7 Q In a Michigan courtroom or lawyer's office?

8 A In a Michigan courtroom.

9 Q In the Ferndale situation, has there been any,
10 to your knowledge, court order?

11 A Yes.

12 Q Was that, again to your knowledge, a court order
13 based upon a consent decree or based upon a trial --

14 A To my knowledge it was not based upon a consent
15 decree.

16 Q Now, Ferndale, where is that in terms of
17 geographic location?

18 A Near Detroit, a suburb.

19 Q Now the Ferndale case, is that in any way tied
20 in with the Detroit desegregation case involving, I believe
21 not the City of Detroit, but surrounding suburbs and com-
22 munities?

23 A Again, I don't feel that knowledgeable to comment
24 on the history of that. I can give you my best impression.

25 Q What is your best impression?

125.

Cunningham & Smith

1 A My best impression is that it has been a case
2 that has been treated separate from the Detroit case.

3 Q What is the population of Ferndale, if you know?

4 A I think the population of Ferndale is sixty to
5 seventy thousand.

6 Q And, is it 5 miles from Detroit or 30 miles, or
7 how far is it, where is it in relation to Detroit?

8 A I would say ten.

9 Q If you know, was the allegation by the United
10 States of America, the plaintiff by the Justice Department,
11 that Ferndale had operated a DeJure segregated system or
12 defecto system?

13 MR. MANASEVIT: I object to this whole line
14 of questioning as it goes beyond the issue of
15 qualification.

16 MR. PHELAN: I am claiming it on the basis
17 that in terms of qualification, the witness
18 stated that his experience has been exclusively
19 DeJure cases in the south and as a consultant
20 with the possible exception to the south being
21 Ferndale, Michigan. I am trying to determine what
22 type of a case it is in Ferndale so I claim the
23 question.

24 MR. MANASEVIT: You can answer..

25 THE WITNESS: I am really unable to answer.

1 BY MR. PHELAN:

2 Q What is a Title IV Center?

3 A Under the Civil Rights Act in the mid-sixties
4 provision was made by congress to provide technical
5 assistance to school districts experiencing school deseg-
6regation. Historically, during the late sixties and early
7 seventies the Title IV Centers were located in the south
8 and were typically based at State Universities. It is my
9 understanding that from approximately 1971 or 1972 Title IV
10 has extended assistance to states outside of the south
11 where university based centers operate to assist school
12 desegregation in districts and provide counselling and con-
13sulting in all matters related to school desegregation.

14 Q Is the funding and payment of these centers
15 supposed to be from federal funds or state and university
16 contributions, or don't you know?

17 A The primary funding is federal funding and in
18 many cases it is sponsored by the insitution, the college
19 or university and they will provide matching funds, but the
20 primary funding is from federal sources.

21 Q You are appearing today as a consultant to the
22 plaintiff?

23 A That's correct.

24 Q In this desegregation matter?

25 A Yes.

1 Q And your time and effort is being paid for by
2 the United States?

3 A In this particular case, I am being paid \$200
4 a day fee plus expenses.

5 Q Paid by the Plaintiff in this case, the United
6 States?

7 A Yes, that's correct.

8 Q This is mostly curiosity on my part, but you said
9 that you are now the Dean of Pepperdine and this division
10 is in Parris Island, is that the Marine Corp base?

11 A That's correct.

12 Q And the Southeast, is that southeast in the
13 United States?

14 A Yes, sir.

15 Q These 41 campuses are scattered?

16 A In the military locations in the southeastern
17 states.

18 Q Do these schools primarily serve men in the
19 service?

20 A The students are a combination of active duty
21 military, they are dependants, veterans and in many cases
22 and locations they are civilians rather than dependants or
23 veterans. These programs are rather small and they are
24 designed to provide, primarily, master degree level programs
25 in Business Administration, Human Resources, Management

1 Counselling, Psychology, and Education to the persons who
2 are in the military or are otherwise employed full time
3 and who wishes to pursue while they are employed full time
4 a full time degree program. So, the programs are so de-
5 signed to meet those particular needs.

6 Q Have you had any experience as a consultant in
7 schools, desegregation schools in which the school attendance
8 pattern was dictated by neighborhood or residential patterns
9 rather than by stated policies of the school board in terms
10 of segregation of the races?

11 A Yes, when we consider that many districts at one
12 time operated under the so-called freedom of choice plan,
13 it has been my experience that under the freedom of choice
14 plans we were dealing with school districts where we had
15 indigent population and indigent neighborhoods making up a
16 district.

17 Q And, these freedom of choice plans, did they
18 operate in southern states subsequent to the Brown
19 decision in the late 1950's or early 1960's?

20 A I think the label freedom of choice is exclusively
21 in the south. I am not sure that the concept is exclusively
22 southern but the label certainly is. The label freedom of
23 choice was a label applied to southern school districts fol-
24 lowing the Brown decision in 1954 devised so-called freedom
25 of choice plans as an alternative to the dual school system.

1 Q For example: The present Attorney General, Mr.
2 Griffin Bell, when he was counsel for Atlanta or some
3 school district was counsel for a board which devised such
4 a plan?

5 A I am not competent to answer that question. I
6 haven't seen his statement recently.

7 Q But, in terms of the consulting work that you
8 did for the Boards you were involved with, in answer to my
9 question, there were some districts which were involved
10 in the freedom of choice plans and you explained the label
11 with your definition as being primarily southern?

12 A Yes.

13 Q Southern school districts?

14 A Yes.

15 Q Was there adoption or suggestion of such a plan,
16 one which took place in the late fifties or early sixties?

17 A We have school districts even today in the
18 south that have freedom of choice plans for example, in a
19 case in which I was involved in last, Tuscaloosa, Alabama,
20 that label has been applied to Tuscaloosa.

21 Q And again, Tuscaloosa, before its adoption of
22 the freedom of choice plan, would that district be
23 characterized in your world and the world of school de-
24 segregation cases as a DeJure segregated district?

25 A The recent matter in Tuscaloosa has been under

1 court order in the past, a court order which according to
2 the United States did not effectively desegregate the entire
3 district leaving a portion of the district in the views of
4 the United States racially identifiable under a freedom
5 of choice plan. The original remedy ordered by the court
6 in view of the United States did not fully desegregate the
7 entire district leaving some of the district under a free-
8 dome of choice plan other portions of the district under
9 a mandated plan of physical school desegregation.

10 Q Before the original plan, before the mandated
11 plan, was it a classic DeJure system?

12 MR. MANASEVIT: I object to the use of the
13 phrase "classic DeJure system".

14 BY MR. PHELAN:

15 Q Was it a system -- was the system in Birmingham
16 a system in which the races were separated in terms of
17 students, in terms of teachers, in terms of school facilities?

18 A A dual school system was maintained by the
19 Tuscaloosa school board.

20 MR. MANASEVIT: You just said Birmingham,
21 did you mean Tuscaloosa?

22 MR. PHELAN: If the board he was referring
23 to was Tuscaloosa, then I meant Tuscaloosa.

24 BY MR. PHELAN:

25 Q Your work in the Boston, Massachusetts area was

1 in race relations in the Roxbury district, were you a
2 consultant appointed by Judge Garrity, or, what is the
3 background of that?

4 A I became involved in Roxbury, in that district,
5 when parallel to my work for the National Humanities
6 Foundation I was in Boston for the summer working on some
7 surveys widely authored on the roles of man and in the
8 process of --

9 Q (Interposing) This is in the summer of 1967?

10 A Yes, sir. And, in the process of that work, I
11 became involved in working with the Roxbury Community
12 Association and the Legal Aid Society there in matters of
13 race relations.

14 Q Then you weren't involved with the Boston school
15 system in terms of them being the employer and this is in
16 1967 long before Judge Garrity?

17 A In school desegregation, I have done curriculum
18 work in Boston, as such, through the University of
19 Massachusetts School of Education.

20 Q But, in your affidavit on page 3, paragraph 3,
21 sub-section a, you start off by saying "I have consulting
22 experience with the following school systems . . ." Then it
23 says Public Schools (selected) and then there is your list
24 and next to the last is Boston, Massachusetts. Then in your
25 cataloging for Attorney Manasevit, my notes indicate that

1 you said Roxbury, or your Roxbury work was for this group,
2 this community group or the legal aid?

3 A That is correct.

4 Q Was your race relations work also for something
5 other than the Boston School Board?

6 A It was connected with the communities associated
7 in Roxbury at that time.

8 Q Which is the community based group and nothing
9 officially connected with the school board?

10 A No, not with the court, no.

11 Q Again, in this point of time, it coincides with
12 your work on your film in 1967?

13 A That's correct.

14 Q By the same token, in Providence, Rhode Island
15 for the school board or for a community group?

16 A No, that grew out of work with Roger Williams
17 College. That college has two campuses, an urban campus
18 and in Providence and so through my work with Roger Williams
19 College I became involved with urban education with the
20 Providence Schools.

21 Q And again, in your two major areas of expertise,
22 this was more in curriculum?

23 A That's correct.

24 MR. PHILLAN: That's all I have.

25 (Off the record discussion.)

1 MR. MANASEVIT: I think at this time we
2 should take a recess.

3 (Whereupon, the taking of the deposition
4 was recessed at 11:10 o'clock a.m., and resumed
5 at 11:20 o'clock, a.m.)
6

7 REDIRECT EXAMINATION

8 BY MR. MANASEVIT:

9 Q Doctor Buford, you stated that you were currently
10 employed by the U. S. Department of Justice in connection
11 with the litigation involved with the U. S. and the Water-
12 bury Board of Education, could you explain to the best of
13 your ability the nature of that employment?

14 A I was contacted by you from the Department of
15 Justice on January the seventh by telephone and was asked
16 if I would be willing to serve as a consultant for the
17 Department in this case and tentatively agreed to do it based
18 upon receipt of a letter from you and all information per-
19 taining to the case. I received that letter about a week
20 later, a letter dated January the tenth, which contained
21 the information that I had requested.

22 Q In connection with your employment by the
23 Justice Department have you reviewed any documents relevant
24 to this school case?

25 A Yes, I have. I have reviewed the June, 1973

1 consent order along with the January, 1974 modification,
2 known I believe, as Plan H. I have reviewed the up-dated
3 version of Plan H from December, 1976 submitted by the
4 school board. I have reviewed the response of the United
5 States to the Court's September 1st, 1976 order. I have
6 also reviewed documents prepared by an officer of the school
7 board entitled : Enrollment Barnard, Duggan and Maloney
8 Combined. To the best of my knowledge, that particular
9 document was prepared in January, 1977.

10 Q Do you know by whom?

11 A Mr. Woods. I have also reviewed the October 1st,
12 1976 enrollment data for Waterbury and have reviewed the
13 January enrollment data, January, 1977 enrollment data.

14 Q In connection with this employment have you
15 travelled to Waterbury in the past?

16 A Yes, I travelled to Waterbury in late January and
17 was here for two days.

18 Q During that time, did you visit any of the schools?

19 A Yes, I visited Barnard and Maloney and Duggan
20 and also a parochial school across the street from Maloney,
21 St. Ann's.

22 Q While you were at those schools, did you speak
23 to employees of the school board?

24 A Yes, I spoke with the principals and vice-
25 principals.

1 Q Did you speak to anyone at St. Ann's?

2 A I spoke with the Nun who served as the principal
3 at St. Ann's.

4 Q Did you also while you were in Waterbury, have
5 meetings with the City Officials in charge of Planning
6 and Urban Renewal?

7 A Yes, I met with the agency head of the City
8 Planning Department and Redevelopment, Mr. Mirto and Mr.
9 Davino.

10 Q Also during that visit, did you meet with any
11 officials of the school board other than the ones you have
12 mentioned as being the principals of the 3 schools?

13 A I met with the Superintendent of Schools and
14 Mr. Woods and Mr. Salisbury in the Superintendent's office.

15 Q During the time that you were in Waterbury,
16 did you also acquire data regarding transportation of
17 students to Barnard school?

18 A Yes, I obtained that data from the principal
19 of Barnard school and discussed the data with the Super-
20 intendent, Mr. Woods and Mr. Salisbury.

21 Q I would like to ask you some questions regarding
22 the plan that you have prepared and submitted in this case
23 called the Proposed Plan for the Desegregation of the Maloney
24 School and it is dated February 8, 1977. Would you briefly
25 describe the contents of that plan?

2 A The plan, again, was a review on my part of the
3 remedies to which I had access of the Board either formally
4 or informally for the treating of the Maloney school.

5 I, again, with the up-dated plan from December,
6 1976 submitted by the Waterbury Board of Education so-
7 called plan A and plan B and I noted the objections of the
8 United States to those two alternatives.

9 I then moved to a consideration of the illustrated
10 remedies provided by the United States which calls for a
11 cross pairing of children in the three schools. Then I
12 moved to a consideration of the three alternatives that I
13 learned about from the documents entitled: Enrollment
14 Barnard, Duggan and Maloney Schools Combined. That was
15 prepared for Doctor Bannon, I believe. That was prepared
16 in early January of 1977. Those alternatives I described
17 as I understood them and provided my own viewpoints on the
18 alternatives, namely; my objections in the face of what I
19 believe to be a more suitable alternative. I then made
20 my recommendation and projected the enrollment that would
21 result from two assignment options and attempted to explain
22 and layout my rationale for the recommendation.

23 Q Would you explain what your recommendation is?

24 A My recommendation would be to close Barnard and
25 to reassign the pupils K thru 5 presently attending Barnard
to Maloney and to Duggan and both of which would remain a

1 K thru 5 school.

2 I have laid out two assignment options for the
3 recommendation. Assignment option one would call for
4 all minority students from the former Barnard zone and all
5 white students who are presently on Country Club Road and the
6 Chase Park Highway areas to be assigned to Duggan and the
7 remaining students who attend Barnard would be assigned to
8 Maloney, K - 5.

9 Under assignment option two, new district lines,
10 zone, lines and attendance lines would be drawn for Duggan
11 and for Maloney to yield on an approximate projection
12 of within two percent of that achieved under said assignment
13 option one.

14 Q Would you explain the basis for this rational
15 for this recommendation and why in your view it is superior
16 to the alternatives that you discussed in the plan?

17 A I began with some assumptions that guided me
18 in the development of this plan. One was I was informed
19 by the Department of Justice that in attempting to remedy
20 the racial identifiability of the Maloney school no treat-
21 ment could be proposed which would call for the closing of
22 the Maloney school. Consequently, that option was ruled
23 out by me. I then made an assumption that if possible, it
24 would be desirable to maintain the present grade configuration;
25 that is, K - 5.

1 I then made the assumption that historically, the 3
2 schools, Barnard, Duggan and Maloney have been mentioned
3 together and that it would make educational sense to con-
4 tinue a consideration of those 3 school districts in my
5 recommendation. Therefore, I did not, for example, go out-
6 side of the boundaries of those attendance zones to consider
7 other schools in my possible remedy or treatment.

8 I also made the assumption that given the present
9 enrollment at the 3 schools, Maloney, Duggan and Barnard,
10 that if possible, it would be desirable to improve the
11 present situation of significant under enrollment in those
12 facilities and to make a recommendation that might con-
13 tribute to the economic scale for the school system. Taken
14 together the 3 schools have currents of approximately 550
15 with their capacity being about 1300. So, with those
16 assumptions in mind, I considered the alternatives that
17 had been mentioned earlier either formally or informally and
18 attempted to rule out a pairing situation on the grounds
19 that it would be better, if possible, to maintain the same
20 grade structure, although pairing was certainly a valid
21 remedy as I understand it to be.

22 I then considered the question of which of the two
23 remaining facilities other than Maloney was the most
24 desirable as an educational plant and in my view the
25 facility at Duggan was more desirable than the one at Barnard

1 in terms of the internal condition including, for example,
2 the swimming pool at Duggan versus the inactivity and
3 incapacity of the pool at Barnard. And, I made some
4 judgements in my own mind about the condition of those
5 schools and concluded that of the two, Duggan would be the
6 more superior and was left with the conclusion that Barnard
7 would be closed and students reassigned to Duggan and Maloney
8 under one of the two assignment options that I have already
9 mentioned.

10 Q In preparing this plan, did you take account of
11 information that you learned at a meeting with Mr. Mirto
12 and Mr. Davino?

13 A Well, I did. I learned from my meeting with
14 them that originally in 1971 a comprehensive plan had been
15 adopted and was published by the City Planning Commission
16 and that comprehensive plan called for the long-range replace-
17 ment of the 3 schools about which we are speaking, Barnard,
18 Duggan and Maloney. I also learned in this conversation
19 that in the views of both gentlemen the problem would be
20 very unlikely that today, or in 1977, that 3 sites would be
21 obtained to replace the 3 schools and that in all likelihood
22 given the present total enrollment of the 3 schools the
23 best direction in which to move would be constructing one
24 school to replace the present 3.

25 I also learned that present redevelopment projects of

1 the City are scheduled to be completed around 1980 and
2 possibly 1981. Also, included in that redevelopment project
3 is the area including the Maloney school. This influenced
4 me particularly in one direction and that is that whatever
5 solution was recommended by me could only be recommended
6 as a remedy for a short time and not for a long term. The
7 long term solution would have to, in my view, be the result
8 of joint planning between the school board and the redevelopment
9 agency and the City Planning Commission and that at
10 best, what could be recommended would be a short term or
11 short run solution.

12 Q Doctor Buford, in your plan did you take account
13 of information that you learned at a meeting with Doctor
14 Wallace, Mr. Woods and Mr. Salisbury?

15 A Yes. I learned that from that meeting that in-
16 deed in the past some alternatives other than the up-
17 dated plan submitted by the Board in December, 1976 had
18 been thought of or suggested perhaps informally as theoretical
19 possibilities. But, for some reason or another were not
20 considered favorable by the Board. This indicated to me
21 that in the minds of the administration there were altern-
22 atives which would involve dealing with the racial
23 identifiability of Maloney by considering the 3 schools to-
24 gether in some fashion or another.

25 The 3 options which I had read about involved, one;

1 closing Duggan and pairing Maloney and Barnard and number
2 two, closing Barnard and pairing Maloney and Duggan and
3 number three, closing Barnard and Duggan and using Maloney
4 as a K thru 5 for the entire zone with the possible use of
5 facilities at St. Ann's. Now, what is indicated to me
6 was that at least there was an administrative readiness
7 for consideration of closing either Duggan and/or Barnard
8 and that it was not a brand new idea on my part.

9 The options fully dealt with and mentioned
10 would have involved a pairing and the closing of Duggan,
11 and Maloney and Barnard would be paired or in the other
12 case Barnard would be closed and a pairing of Maloney
13 and Duggan, which I considered to be a viable alternative.

14 I don't favor that as much as I do the recommend-
15 ation that I have made, but I had considered the pairing
16 of Maloney and Duggan to be theoretically acceptable to me
17 as a number two.

18 I learned from this meeting that the school
19 administration, first of all, was quite cooperative in
20 providing all answers to questions that I had, questions
21 about transportation and otherwise and I also learned that,
22 again, reaffirming for myself, that the notion of closing
23 a school was not a new one.

24 Q In your view, as an educator and as someone
25 considered to be an expert in the area of school desegregation

1 is this plan administratively feasible?

2 A Yes.

3 Q Could you explain what contributes to the
4 administrative feasibility?

5 A I think that under the assignment option number
6 one we have a recommendation that present transportation to
7 the Barnard school be continued and that be used as a
8 basis for assignment. I believe it takes into account what
9 exists at present. It is probably a better and easier
10 plan, technically, to administer than the second assignment
11 option, although I believe the second option might be
12 preferable to the Board. That would be my guess. It would
13 allow more degrees of freedom in drawing school attendance
14 lines.

15 I believe it would -- the school district would
16 recognize economy in closing an underutilized facility and
17 using the other two closer to their capacity potentials,
18 than is presently the case.

19 Q In your view, as an educator, is this plan
20 educationally sound?

21 A I believe it is. I believe because grade con-
22 figuration is maintained, K - 5, this is consistent with
23 the remaining pattern in the school district and it is
24 educationally sound.

25 Q Is one of the considerations in writing this

1 the minimization of transportation?

2 A As compared to other alternatives, yes, in my
3 view it was a consideration. I noted that at Barnard we
4 already have some 70 or 75 children presently transported.
5 That is regular students and I didn't mean students for the
6 purpose of special education or learning disabilities.

7 Under the recommendation that I have made, that
8 transportation would continue and in my view the additional
9 transportation required under this recommendation would be
10 more than off-set by the cost saved from closing a
11 facility and when compared with the pairing alternatives
12 recommended, I believe that the transportation resulting
13 from this would be no more than and in my view less than
14 that called for.

15 Q Do you believe that the plan is financially
16 sound?

17 A I believe I have mentioned that I believe the
18 costs saved from closing one of the 3 facilities would more
19 than off-set the additional transportation required.

20 Q The plan contains a judgment that the Duggan
21 facility is superior than the Barnard facility. Could you
22 explain the basis of that particular judgment?

23 A During my on-site visit, I observed that the
24 interior of the Barnard facility was not in the same state
25 of repair as that in the Duggan facility. And, I noticed

1 in numerous classes, rooms were in bad repair with paint
2 peeling, walls and floors in poor condition, the overall
3 internal appearance of Barnard, in my view, was not as
4 attractive or as sound or as well maintained as that at
5 Duggan and I also noted that the swimming pool at Duggan was
6 operating while the swimming pool at Barnard was not
7 operating due to faulty plumbing, as I was told by the
8 principal.

9 Q You were told by the principal of Barnard?

10 A Yes.

11 Q While at Duggan, did you see any evidence of a
12 prior administrative decision by the school board that
13 Duggan was a superior facility to Barnard?

14 A Well, I made an assumption that because the
15 trainable classes, some 40 to 45 children in trainable
16 classes had been assigned to Duggan, that the reason in
17 my mind, while I did not know the minds of the school
18 board, the reason in my mind could well have been because
19 it was. It has the classroom space needed; both schools
20 of the classroom space. That would be just -- it was
21 interesting to me that the students were assigned to Dug-
22 gan rather than to Barnard and I concluded it was a more
23 appropriate facility.

24 Q The plan also contains a judgment that the Maloney
25 facility is superior to the Barnard facility. Could you

1 explain that judgement?

2 A Well, again I noted at the Maloney school that,
3 and was told that, considerable improvements had been made
4 internally at Maloney school, such as carpetting, painting,
5 certain safety features and devices being added to the
6 building. I am also aware that the condition of the
7 gymnasium is perhaps not comparable to the other two
8 schools, but overall inside the Maloney school's appearance
9 is fresh, clean, well-maintained and in my view, more so than
10 at Barnard. I was operating under an assumption that
11 regardless of the condition, no remedy could be considered
12 which called for the closing of the Maloney school.

13 Q While at the Barnard school, did you have
14 occasion to view the playground at Barnard?

15 A Yes, I did.

16 Q While at Maloney, did you have occasion to view
17 the playground at that facility?

18 A Yes, I did.

19 Q In your view which is the superior playground?

20 A The playground at Barnard.

21 Q Notwithstanding the inferior playground at
22 Maloney, in your view which is the better facility?

23 A Maloney.

24 Q The plan also contained a judgment that Barnard
25 is so poor as to justify closing. Could you explain the

1 basis for that judgment?

2 A Well, again that goes back to the reason of
3 the underutilization of all 3, all 3 are underutilized and
4 again to the assumption that Maloney could not be closed.
5 I was left with Duggan and Barnard to consider. It seemed
6 to me not to be in the best interest to keep all 3 facilities
7 open continuing with the pattern of underutilization and
8 underenrollment of the facilities, and a judgment would be
9 made and was valid to make about which of the remaining
10 two facilities was more appropriate and I made that judgement
11 in that Duggan was the more appropriate facility. It was
12 also my judgment that in order to improve the interior of
13 Barnard, given the condition that I saw there and what I
14 was told, that considerable funds would have to be expended
15 by the school board in order to bring that facility up to
16 parity with the interior of Duggan.

17 Q If you were considering these 3 schools in the
18 absence of a court order requiring Maloney to stay open,
19 and you were to recommend one of the schools be closed,
20 which school would that be?

21 A As a short term treatment, I would recommend
22 that Barnard would be closed. And, I have to emphasize
23 short term and by short term I am influenced by the present
24 plan being in the City and the act of redevelopment and
25 the agencies prediction to complete the project by 1980 or

1 1961, possibly. So, therefore, the short term would be
2 3 or 4 years.

3 Q The plan refers to inconvenience and/or problems
4 with regard to the use of St. Ann's in conjunction with
5 Maloney. Could you elaborate on what sort of inconveniences
6 and problems you were referring to?

7 A It doesn't seem to me to be appropriate to close
8 two facilities thereby causing an over-capacity problem
9 at Maloney which would result in the need to secure addition-
10 al classroom space. It is my understanding that inquiry
11 has been made at St. Ann's about the possibility of securing
12 additional classroom space at that parochial school. In
13 fact, the principal told me that it was presently planned
14 to --

15 MR. PHELAN: I object to what the principal
16 said.

17 MR. MANASEVIT: I offer it as an admission
18 on the part of a defendant.

19 MR. PHELAN: What principal is a party
20 defendant? All managing agencies are defendants,
21 members of the school board --

22 MR. MANASEVIT: Prior to my meeting him,
23 I contacted Mr. Cicchetti of your office and he
24 stated he wanted to be present at the meeting and
25 I recognized his right to be present because the

1 principals are represented by your office
2 as party defendants.

3 MR. PHILLAN: The record will show the
4 party defendants in this action are the Super-
5 intendant of Schools, the Mayor and whomever at
6 any point in time were the commissioners
7 on the Board of Education and the undefined
8 entity known as the City of Waterbury. I say
9 that no employee, no principal is a party
10 defendant in this action.

11 MR. MANASEVIT: Is your position that the
12 principal is not a managing agent of the
13 Board of Education?

14 MR. PHILLAN: My position is they are not
15 defendants, they are not parties to the action.

16 MR. MANASEVIT: I again offer the statement
17 as a statement of a managing agent with your
18 objection noted.

19 THE WITNESS: The principal of St. Ann's
20 school told me that --

21 MR. PHILLAN: This is the principal of St.
22 Ann's school.

23 MR. MANASEVIT: Is that what you meant?

24 THE WITNESS: Well, I can rephrase that.
25 In conversations with the principal at Maloney,

1 I was told it was his best understanding that
2 discussions had been hold with parochial school
3 officials for the purpose of determining the
4 feasibility and cost of renting eight class-
5 rooms at the parochial school for use by students
6 attending Maloney.

7 BY MR. HANASLEVIT:

8 Q Did he mention the cost?

9 A No, the principal did not mention the cost.

10 Q The plan that you prepared refers to two
11 possible assignment options available for the implementation
12 of that plan. Could you explain in detail what the two
13 assignment options are and also how they would be
14 implemented?

15 A Amendment option number one takes into account
16 the present transportation plan for the Barnard children
17 attending Duggan as well as the number of minority students
18 presently attending Barnard and recommends that the school
19 board assign all minority students presently attending
20 Barnard to Duggan and all of those students presently
21 transported from the Country Club Road and Chase Park Highway
22 areas to the Duggan school, K- 5. All other students
23 presently assigned to Barnard would be reassigned to Maloney.

24 Under assignment option two, it would be left to
25 the school board to draw two attendance zones, one for Duggan

1 and one for Maloney which would result in essentially the
2 same enrollment as projected and achieved under assignment
3 option number one.

4 Q In your view, is it possible to draw the zone
5 lines so as to achieve two enrollment projections within two
6 percent?

7 A I have to accept that theoretically it is.
8 It would remain, however, for that to be tested on what
9 is referred to as a pupil location map which is a map of
10 the 3 zones showing pupil residences by race for the 3
11 schools.

12 Q The plan on page six states under this alternative
13 attendance under a ratio of so-called neighborhood integrity
14 would be preserved. Could you explain how the ratio of
15 neighborhood integrity would be preserved?

16 A Well, it is my view that under assignment
17 option one, which is based upon the present transportation
18 patterns, essentially, the children from a given neighbor-
19 hood presently transported to Duggan would be transported
20 to Barnard -- I'm sorry, transported to Barnard would be
21 transported to Duggan and as a group to Maloney.

22 The exception would be the small number of
23 minority students living in close proximity to white students;
24 the minority students being reassigned to Duggan and the
25 white students being reassigned to Maloney.

151.

Cunningham & Smith

1 Perhaps that could be improved upon under option number
2 two where zone lines would be accomplished.

3 Q I would like to ask you a hypothetical question:
4 What would you think of the likelihood of success of a
5 desegregation plan that would draw a single zone encompass-
6 sing Barnard, Duggan and Maloney and provide for freedom
7 of choice within that single zone permitting any of the
8 students to attend at any of those 3 schools?

9 A I would not predict success for that in view of
10 the fact that that is not consistent with my own experience
11 with freedom of choice attendance plans and also because
12 it would, in my view, be at variance with other plans, the
13 mast plan, for desegregating the city as a whole.

14 I don 't think it would work. I don't think it
15 would result in the changing of the racial identifiability
16 of the Maloney school.

17 Q Were this district to propose such a plan, would
18 you draw any conclusions or judgments or make any assumptions
19 as to their judgement as to which schools they would use?

20 A The most immediate judgment I would have to
21 make --

22 MR. PHELAN: I object to this. You are
23 asking the witness to comment on what other people
24 are thinking. He can explain what he is think-
25 ing, not other people.

1 MR. MANASEVIT: Let me rephrase the
2 question.

3 BY MR. MANASEVIT:

4 Q What judgment would you make as to a plan that
5 treated those schools in the way we have just discussed?

6 A The judgement, the major judgment that I would
7 make is that the Maloney school would be considered on a
8 parity educationally and otherwise with the remaining
9 schools. I would make the assumption that the Maloney
10 school would be considered educationally sound, it would
11 be a good place to attend school and that there would be
12 no fundamental disparity between that school, which is the
13 school that I understand is at issue here, and the other
14 schools.

15 Q Would such a plan indicate to you any judgment
16 as to the relationship of the community surrounding the
17 three schools?

18 A Well --

19 MR. PHELAN: I object to the question
20 unless the question defines a judgment by whom.

21 BY MR. MANASEVIT:

22 Q Would you make such a judgment?

23 A Would you repeat the question, please?

24 Q If you were to consider such a plan, would you
25 make any judgment as to the -- I will withdraw the question.

1 MR. KLEIN: I don't have any further
2 questions.

3 (Whereupon, the taking of the deposition
4 was recessed at 12:10 o'clock p.m., and resumed
5 at 12:25 o'clock, p.m.)
6

7
8 RECROSS EXAMINATION

9 BY MR. PHELAN:

10 Q Doctor Buford, on pages two and three of the
11 Justice Department plan which -- I'm sorry, your plan
12 which was prepared and submitted by you dated February 8th,
13 1977, you speak of, ". . . it may be useful to look at
14 3 other alternatives . . ." and then you list them. Are
15 they the 3 plans or suggestions which were contained in
16 Mr. Wood's memo to Doctor Bannon that you saw?

17 A That's correct.

18 Q In the course of your visit to Waterbury those
19 two days in January, last month, did you consult with any
20 Barnard parents?

21 A No.

22 Q Did you consult with any representatives of
23 the Barnard P.T.A.?

24 A No.

25 Q Did you consult with any parents?

1 A No.

2 Q Now where in the Barnard school, in terms of
3 location, is the Barnard pool?

4 A I was not shown the Barnard pool. We were told
5 that the Barnard pool was not operational; plumbing dif-
6 ficulties and that the pool was empty.

7 Q Is it your recollection that while you were
8 at Barnard school you were told there was a swimming pool,
9 is that your recollection?

10 A Correct.

11 Q Now in your direct examination, you stated
12 that the three schools presently full, today, on a school
13 day have approximately, by memory I believe it was 550
14 students you said? I am looking for my notes here. Three
15 schools, 550 students. What is the capacity of the three
16 schools and you said it was approximately 1300 students,
17 do you recall stating that?

18 A I stated that.

19 Q Now when you speak of the 3 schools of 550
20 students, is it not correct that you are not including the
21 bi-lingual classes or the classes at Maloney and that you
22 are not including the special education classes at Duggan?

23 A That is correct. I was basing those facts on the
24 information contained on page 10 of the U. S.'s response
25 to the order of the Court. The response was dated fifteen

155.

Cunningham & Smith

1 September, 1976. Page 10 of that contains the figures to
2 which I was referring.

3 Q Thank you.

4 (Pause)

5 Whether or not it is part of your conclusion
6 or you operated on the assumption by 1980 or 1981 the
7 Maloney school would be taken, acquired, by the redevelop-
8 ment authorities?

9 A No, I did not. I really didn't conclude that, I
10 was not told for a fact by the officials from the
11 redevelopment agency what would be done with Maloney school.
12 I was made aware that Maloney school was in the redevelop-
13 ment project, but it was never indicated to me precisely
14 what it was planned for. The only thing that was mentioned
15 was the desirability of locating a new elementary school
16 that would serve the 3 school sub-districts, if you will,
17 the Maloney, Duggan and Barnard area in an area south of
18 the Maloney school. But, I did not understand that for a
19 fact the Maloney school or any of the schools for that
20 matter would be removed. It was explained to me that the
21 district, at the present time, was experiencing financial
22 difficulty and that there was a real question about what
23 the replacement plan would be.

24 Q By the district, you mean the Waterbury school
25 district in the City of Waterbury?

156.

ingham & Smith

1
2 A The Board of Education.

3 Q Didn't you indicate that one of the reasons for
4 closing Barnard, perhaps the frosting on the cake from your
5 point of view, was the fact that the Maloney school versus
6 the Barnard school was a little bit better, but that the
7 Maloney school maybe would have a shorter life in terms
8 of the long range and therefore you would only have to come
9 up with a short range plan?

10 A I, again, gained the impression that from the
11 City Planner under the 1971 plan originally it was entitled
12 to replace all three schools and I made an assumption that
13 at least on the part of the redevelopment agency official
14 and the City Planning Director that they would like to see
15 some effort made within the next three to four years to
16 replace the three schools and it was -- I was told in their
17 view that it wouldn't be appropriate to build three new
18 schools as opposed to just one.

19 Q Whether or not in terms of that plan were you
20 told that Maloney and Duggan were to be replaced by 1980
21 and Barnard by 1990?

22 A Well --

23 Q This is the 1971 plan to which you referred to?

24 A Those dates were quoted. It was explained to me
25 at the time the plan was made the enrollment at those 3
schools was different than it is now and perhaps there would

1 have to be a modification in the planning, but what you are
2 saying is correct. I was told that in the 1971 plan
3 those were the dates projected for replacement.

4 Q So the three schools -- of the three schools
5 Barnard was supposed to live at least ten years more than
6 the other two?

7 A According to the 1971 plan.

8 Q According to that plan, right. You indicated
9 that the school officials had been cooperative. Has the
10 Corporation Counsel's office been cooperative with you?

11 A Most cooperative.

12 Q And the other City officials whom you inter-
13 viewed?

14 A Absolutely.

15 Q Now in your studies, did you determine or did
16 you know that the Barnard and Duggan schools were K - 8
17 schools prior to September of 1975?

18 A Yes, I did know that prior to the implementing
19 of the Middle School plan in the west end. Yes, sir.

20 Q And since the mid-sixties or late sixties or
21 certainly in the seventies that Duggan, while a K - 8
22 school had in it's rooms special education classes?

23 A I didn't know that, but I accept that.

24 Q Now, in your plan you indicate that, and I am
25 reading from page 4: all minority students from the former

1 Barnard zone and all white students bussed from Country
2 Club Road and Chase Park Highway would be assigned to
3 Duggan. There are other items, I am sure in your plan, but
4 let's talk about this and I am reading from the bottom
5 of page four to the top of page five. Now in your plan,
6 whether or not you know, you must know because it is part
7 of appendix one to your plan, that today in Duggan if
8 everybody is in school from the Bishop school area, the
9 Bishop district, there are seven students bussed into the
10 Barnard school, one of whom is white and six of them are
11 black?

12 A Yes.

13 Q Now black would be presumed to be minority so
14 take six black students, now because they are Bishop
15 district students they don't reside in the Barnard district,
16 is that correct in terms of your understanding?

17 A I was told in the meeting with the Superintendent,
18 Mr. Woods and Mr. Salisbury that all of the students
19 transported to the Barnard school lived in the Barnard
20 school district.

21 Q Well, alright. Does the term Bishop district
22 mean anything to you?

23 A It is a designation for an area where the
24 Bishop school was formerly located.

25 Q Is that area generally north of the center of

1 of the Town of Waterbury, it would be on Bishops Street?

2 A That is my understanding.

3 Q Is that a fair statement as to the location?

4 A Yes.

5 Q Is it also fair to say the Barnard district is,
6 if you will, southwest to the far west of the Center?

7 A Yes, sir.

8 Q Do you, in your studies, have knowledge that
9 the Bishop school, as a school, is no longer functioning?

10 A Yes, sir.

11 Q That from 1960 to about 1973 or 1974 there was
12 a Follow Through Center there, do you know any of that?

13 A I believe I recall that from memory.

14 Q But in terms of the six blacks, they live in a
15 house or a home that is something not in the Barnard dis-
16 trict is that correct?

17 A I will accept what you say.

18 Q Well under your plan, what is going to happen
19 to those six black kids?

20 A I mentioned under the plan that the six black
21 children would be transported to a school under assignment
22 option one.

23 Q I am talking about assignment option one.

24 A These children would continue to be transported,
25 except they would be transported over to Duggan.

1 Q Now in the Barnard district, in the traditional
2 sense that geographic area is in the portion of the City
3 known as Brooklyn out to the extreme westerly boundaries
4 of Waterbury and Middlebury. There are some minority
5 students who reside there?

6 A Alright, sir.

7 Q And those students under your plan would be
8 going to Duggan?

9 A All minority students and my projection would be
10 22 or 23 students and I am looking at the October 1st, 1976
11 enrollment chart where it lists ten black, one Asian-
12 American and eleven Spanish-American presently attending
13 Barnard. All of those have been classified as minority
14 students who would be reassigned to Duggan.

15 Q So if on a given street in the Barnard district,
16 say Green Street, which also happens to be adjacent to the
17 school, if a minority student lived there and two houses
18 down a white student lived, under your alternative one,
19 the minority students would go to Duggan and the white
20 student would go to Maloney?

21 A That's correct.

22 Q Now further you have an appendix one and you
23 recognize that in terms of again, white students bussed to
24 Barnard, you have two from the Lakeside Boulevard area
25 and 18 from Plattsville area. What happens to those twenty

under your plan?

A They would be transported instead of to Barnard, they would be transported to Maloney.

Q Now, and again I am quoting from a remaining portion of your assignment option number one, "The remaining students, all white, would be assigned to Maloney. Now, the remaining students are walkers, they walk to school?

A Those students, though white students transferred to Barnard, plus the walkers, yes.

Q Now take the walkers. You say you visited the school?

A Yes, sir.

Q You are aware of the distance from Barnard to Maloney?

A yes, sir.

Q And, you observed the situation in terms of highways, railroad overpasses, lumber yards?

A I did indeed.

Q As an expert in the educational field and desegregation planning, whether or not for you to recommend that for safety reasons everyone of those students should be bussed to Maloney?

A Based upon my knowledge, without seeing a pupil location map of precise residential locations of all of the students in it, I would recommend that for safety factors the

1 school board follow the policy of transporting students
2 for safety reasons.

3 Q And for safety reasons everyone of those students
4 who walk today to Barnard would be required to to be bussed
5 to Maloney?

6 A That would be my guess.

7 Q Bearing in mind the Route 8, the heavy traffic
8 patterns, the railroad overpass and the lumber yards and
9 the commercial development enroute when you go from the
10 door of Barnard to the door of Maloney, is that a fair
11 statement of what the factors, safety factors, would be?

12 A I accept the fact that there are basically two
13 routes to get from Barnard attendance area to the Maloney
14 school, one on Washington by way of Washington or by means
15 of Liberty, so either one of those, yes, would cross
16 railroad tracks and would be under, I believe, your Route 84.

17 Q It is Route 8, south.

18 A Alright, sir.

19 Q And either one crosses the river, the Naugatuck
20 River?

21 A Alright, sir.

22 Q Is that correct?

23 A Yes.

24 Q One of your assumption about Mr. Manasevit asked
25 you was about neighborhood integrity. How do you explain

1 how neighborhood integrity is achieved by putting all of
2 those walkers on a bus to Maloney?

3 A Well, my assumption would be that really under
4 either of the assignment options you would assign students
5 with, except for the Bishop School area that you have
6 mentioned, that those seven students there would be assigned
7 from their neighborhood to attend another school. I think
8 that, again, there are modifications and exceptions to that
9 under the alternative one which is based upon the district
10 transportation plan. Under assignment option number two
11 which is part of the plan, it provides for a greater degree
12 of freedom for the school board in assignments. I would
13 assume that could be done even more so, for example, to take
14 care of the situation you brought up a few minutes ago
15 with a white child living next door to a minority child
16 on Green Street and they would not be separated. A line
17 could be drawn to take that into account so that the
18 children living in the same general residential area would
19 simply be reassigned to either Duggan or to Maloney. That
20 is what I mean by the term neighborhood integrity.

21 Q You indicated that, and in fact it happened to
22 be one of your first assumptions and I don't know whether
23 it happened to be first in priority but it happened to be
24 the first assumption that you gave, and this is in terms
25 of again why your plan was superior. This was given in respon-

1 to a question asked you by Mr. Manasevit as to why your
2 plan was superior to any of the 3 plans that were in the
3 Wood memo to Doctor Bannon and in the first one was the
4 assumption: Justice Department says that you cannot close
5 Maloney. I presume you said something along those lines,
6 that is from my notes, that the Maloney school must be kept
7 open. The Justice Department told you that?

8 A The Justice Department informed me that the school
9 board had been enjoined from transporting pupils away from
10 Maloney school districts and advised me that in considering
11 all alternatives for treatment that it wouldn't be appropriate
12 to consider the closing of Maloney school.

13 Q Well, alright. You were operating under the
14 principle that the Court order was that you couldn't close
15 Maloney or that the Court order was that Maloney district
16 students should not be transported outside of the Maloney
17 district?

18 A I concluded that, I was again -- I am informing
19 you what it was I was advised by the Justice Department and
20 that was not to consider a plan that would involve the
21 closing of Maloney school.

22 MR. PHILAN: I would like to offer as an
23 exhibit the August 31, 1976 order by Judge
24 Murphy in the instant matter.

25 MR. MANASEVIT: I don't have any objection,

1 to making it an exhibit, but I don't think it
2 is necessary as it is already in the record.

3 MR. PHELAN: Alright.

4 BY MR. PHELAN:

5 Q I would ask you, Doctor Bufaord, to read from
6 this document which is in the record which is the August 31st
7 order by Judge Murphy in the instant matter, just read it
8 to yourself and particularly this first paragraph towards
9 the bottom of page one and whether or not the order indi-
10 cates that the Defendants are enjoined from transferring
11 K thru 5 schildren from Maloney school to some other school
12 and whether or not the order is silent, but whether or not
13 the Board may close the Maloney school?

14 A I read the one paragraph that you referred to
15 and in the paragraph that you referred me to there is no
16 mention of -- there is no language one way or the other
17 about closing the Maloney school.

18 Q Would you read the entire order, just take a
19 minute to read the entire order and see if there is any
20 language in there which prohibits the closing of the Maloney
21 school as a school?

22 A No, I see no language that prohibits it.

23 Q If the Board had come up with the plan which
24 indicates that, e.g., all Maloney district students should
25 attend a facility at St. Ann's school, that is the school

1 across the street, would your recommendation by the same
2 in terms of closing --

3 A Now, I wasn't invited by the United States to
4 serve as a consultant under those circumstances, so I
5 really don't know what the issue would then be.

6 Q Well, as an expert, if you were given just the
7 facts that you have learned and that you were presented
8 with the plan that Maloney district students should attend
9 classes at St. Ann's building, and you toured the building
10 and viewed the building and given that do you believe your
11 recommendation would be the same as it is now as to the
12 feasibility?

13 A I think the question is confusing. I think you
14 would violate the order.

15 Q You have given a plan and the record reflects
16 what the plan is. I want to know if the plan would be the
17 same, e.g., the closing of Barnard and bussing?

18 A Well, we really have to treat an entirely
19 different set of circumstances in that eventuality and I
20 really would feel uncomfortable giving an answer right off
21 the top of my head. For example: I would have some questions,
22 as I did, when I viewed St. Ann's facility and discussed
23 the possible leasing of 7 classrooms and one office on the
24 second floor as to whether in fact those kinds of facilities
25 would be available in view of the anticipated enrollment at

1 St. Ann's, the increase, and there are variables that are
2 hard for me to deal with and I would find at this particular
3 point it difficult to deal with this in the abstract.

4 MR. PHILAN: Thank you, that's all I have.
5
6

7 REREDIRECT EXAMINATION

8 BY MR. MANASEVIT:

9 Q Mr. Buford, just a couple of questions. Let me
10 ask you to refer to the October, 1976 data and also your
11 plan, I don't think you will need to actually refer to it,
12 my question is based on that October, 1976 data. How
13 many students would need to be transported under your plan
14 who are not currently transported?

15 A Well, assuming that all of the data is correct
16 and under that assumption and assuming as I was asked by
17 Mr. Phelan if all of the students not transported currently
18 in the Barnard district would be transported for safety
19 reasons, then we have approximately 140, to the best of my
20 judgment. I think that may be off somewhat but it would be
21 somewhere around 140.

22 Q If it was off, what would it be off in your
23 judgment?

24 A It is my judgement it would be under. I have
25 learned that the transportation figures which were attached

1 as an appendix to this plan, appendix one, might be off by
2 about 7, but the figures in the plan are 69 and that in
3 fact there may be 76, but again I am assuming that the
4 enrollment figures are correct. I don't think it would be
5 any more than that.

6 Q The transportation data in the plan, appendix
7 one, does that appendix represent the data that was furnished
8 to you?

9 A Yes. It was furnished to me by Mr. Norman
10 Fitelson.

11 Q Did you verify that data with people from the
12 Central Office Staff?

13 A Yes, at the meeting with the Superintendent, Mr
14 Wood and Mr. Salisbury I verified that.

15 Q Did someone from the Corporation Counsel's office
16 further verify that information for you by calling Mr.
17 Fitelson?

18 A I believe that is correct.

19 Q Do you recall who that person was?

20 A I believe it was Mr. White? The policeman.

21 Q Just to the best of your recollection?

22 A I believe it was Mr. White.

23 Q Okay. Now, using the 140 student figure, would
24 you tell us to the best of your ability what the race of
25 those 140 students would be if it were broken down racially?

1 A The race of the 140 would be white.

2 Q All white?

3 A Yes.

4 Q Now let me ask you a hypothetical question:

5 Let's assume, again using the October, 1976 figures, that
6 we closed Maloney and reassigned those people either to
7 Barnard or Duggan to divide them between those two schools,
8 if we used the same set of assumptions with regard to the
9 requirement of transportation, how many students then
10 would have to be transported who are not being transported
11 now?

12 A Then the entire enrollment would be transported
13 according to this October chart that I have. It lists
14 203.

15 Q What is the race of those students?

16 A One hundred seventy-two are listed as Spanish-
17 American; four are listed as black and twenty-seven are
18 listed as non-minority.

19 Q Now, let me ask you this: If we were to pick
20 a plan as between what I just suggested, closing Maloney
21 or the plan that you suggested in the desegregation plan and
22 we were choosing only on the basis of minimizing trans-
23 portation regardless of the race of the children who were
24 going to be transported which plan would have the effect
25 of minimizing transportation?

1 A Of the two?

2 Q Of the two.

3 A The plan I recommended.

4 Q Now Mr. Phelan pointed out and you agreed that
5 the order entered September 1st, dated August 31st, does not
6 require or refer at all to the closing of Maloney school.
7 What does that order require?

8 A The order requires that in one part no child
9 be subject to the implementation of the Plan II which would
10 transfer K thru S children from Maloney to some other
11 school; it also orders that, in the language of this order,
12 that the Defendants, their agents and employees. . . are
13 enjoined to prepare an alternative desegregation plan, so
14 forth and so on.

15 Q Let me ask you this: Assuming that the school
16 district obeys the order and also closes Maloney school and
17 let's assume they tear it down, but they are still obeying,
18 what would the consequence be then?

19 A Could you rephrase that question?

20 Q Let's assume that Maloney is boarded up, for just
21 an assumption than, that nonetheless the school district
22 obeys that order, what would be the situation then?

23 A The situation would be that people would have
24 no place to go who attended Maloney.

25 MR. MARASEVIT: Thank you.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

REXCROSS EXAMINATION

BY MR. PHELAN:

Q They have no place to go unless there were an instant school erected or St. Ann's school or unless they rented space?

A Unless another school, I supposed refers to in the interpretation the Maloney school.

Q Another site as for classroom activities known as a school within the confines of the district, is that correct?

A Yes.

Q In reference to your inspection of the 3 school sites, and your indication under your plan that approximately 140 more Barnard students would be riding a bus than who don't ride a bus today, is that correct?

A Yes.

Q They would be riding a bus to Maloney?

A Yes.

Q There would be other people from Barnard going to Maloney or Duggan and these would be pupils that came on a bus to Barnard today and the bus would simply take them on to Maloney rather than Barnard?

A Yes.

Q Now, today at Maloney, aside from any bi-lingual children, the K - 5 children who are in Maloney this

1 morning, how many came on a bus?

2 A To Maloney?

3 Q Yes.

4 A Unless there are some learning disability
5 classes that I am not aware of or including in the figures,
6 I don't think the regular so-called enrollment would be
7 transported.

8 Q In orther words, all regular Maloneyites walk
9 in the K - 5 grades?

10 A Yes.

11 Q Now is Maloney at it's northern side -- does
12 it have the site of an ambulance service?

13 A I believe that is correct, yes.

14 Q And on the south side between Maloney and St.
15 Ann's Church is that a slight uphill grade?

16 A Yes.

17 Q And on the westerly side is there a nerrow stip
18 by Pond Street and East Clay Street which is a downhill
19 grade?

20 A Yes, it is.

21 Q Now the area of the schoolyard at Maloney, is
22 it the smalles of the 3 schools?

23 A Yes, I believe that's correct.

24 Q And again for the 76 Barnard bussers there is a
25 long stretch on Dryer Street for the busses to park, unload or

1 offload and to load up again the students?

2 A There is on Dryer Street again somewhat of an
3 uphill grade.

4 Q There is an area for the students to get off
5 and on the bus?

6 A Yes.

7 Q In order for busses to park on Dryer they have
8 to cross from the Barnad school across Dryer where there is
9 a wall of the Riverside Cemetary?

10 A That's correct.

11 Q And the signs say No Parking, is that correct?

12 A I believe that is correct.

13 Q And the area for the busses is between five and
14 eight hundred feet for them to pull along in front of
15 Barnard?

16 A I would accept that. I have not measured the
17 exact distance.

18 Q On the St. Ann's side of Maloney there is about
19 75 to 100 feet?

20 A Again, I hven't measured that. I occurs to me
21 that the distance would be larger than that, but, again I
22 haven't measured it. I can say that the distance for off-
23 loading at Maloney would be shorter than at the site on
24 Dryer Street.

25 Q Would you say considerably shorter?

1
2 A I would say shorter than -- I would probably
3 say considerably, but again, I have no exact measurements
4 and I really feel --

5 Q (Interposing) Whether or not the intersection
6 of South Elm Street -- whether or not the westerly side of
7 Maloney borders on South Elm Street?

8 A That's correct, sir.

9 Q The junction of South Elm and East Clay, whether
10 or not that junction is in the approximate distance of
11 15 to 25 feet west of South Main Street?

12 A It would be east.

13 Q East of South Main Street, I am sorry.

14 A Probably about that approximate distance.

15 Q And South Main Street, is that one of the main
16 thoroughfares of the City outside of Main Street?

17 A Yes.

18 Q And the area from the junction of East Clay and
19 South Main Streets northerly to the Interstate Route 84
20 overpass of South Main Street whether or not on both sides
21 of South Main Street sixty percent of that area has now
22 been acquired for redevelopment purposes?

23 A I would accept that as generally true although
24 I don't know the precise figures. I know redevelopment has
25 begun in this area but I don't know the precise figures.

Q Did you observe whether or not on the northerly

1 side of, I'm sorry the easterly side of South Main Street
2 in this area between the junction and Route 34 there are
3 buildings standing that are ninety percent unoccupied?

4 A I think that is probably correct.

5 MR. PHILLAM: Okay, that's all I have.

6 MR. MANASLVIT: I don't have anything
7 further.

8 (Whereupon, the taking of the deposition
9 was concluded at 1:10 o'clock, p.m., and the
10 witness excused.)
11

12
13 * * *
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
LUFORD, Warren	4	17	28	48
			63	67

UNITED STATES DISTRICT COURT
IN THE
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,
Plaintiff,

and

SOUTH END EDUCATION COMMITTEE, ET AL,
Intervening Plaintiffs,

VS.

BOARD OF EDUCATION OF WATERBURY, CONNECTICUT, ET AL,
Defendants.

CIVIL ACTION NO. 13,465

BRIEF
AND ALTERNATIVE PLANS
OF AMICUS BARNARD SCHOOL PTA, INC.

DATED at New Haven, Connecticut, this 7th day of April, 1977

RECEIVED

APR 12 1977

Corporation Counsel's Office

GARRISON & KERN
ATTORNEYS AT LAW
SUITE 408
192 TEMPLE STREET
NEW HAVEN, CONNECTICUT
06510

178.

* * *

Amicus Plan A - Voluntary majority to minority transfers.

Under such a plan, students who are members of a majority racial or ethnic group at either Barnard, Maloney or Duggan Schools would be allowed to transfer to any of the other two schools provided that they would be members of a minority racial or ethnic group in the school to which they transferred.

Amicus Plan B - Notice Plan. Under this plan, the parents

of children attending Barnard and Duggan would be formally notified that their children would be bused to Maloney unless they made timely objection. Only the children of those who failed to object would be bused; the others would remain at their respective schools.

Amicus Plan C - Majority to minority transfer with busing

of certain Duggan students. Under this plan, none of the three schools would be closed. Forty-three Special Education students (16 Black and 27 White) would remain at Duggan. The 3 Indian, 9 Black and 40 Hispanic students in Duggan's regular education program would be bused (or in some cases would walk) to Barnard.

The 82 White students would be bused to Maloney. Voluntary majority to minority transfers would desegregate the three schools even further, but at minimum, the following enrollments would result:

DUGGAN SCHOOL

Black	16	37%
White	27	63%
	<u>43</u>	<u>100%</u>

MALONEY SCHOOL

Black	4	1%
White	110	34%
Hispanic	211	65%
	<u>325</u>	<u>100%</u>

BARNARD SCHOOL

Asian	1	1%
American Indian	3	1%
Black	27	10%
Hispanic	57	20%
White	192	68%
	<u>280</u>	<u>100%</u>

This proposal is submitted as one which might be the basis for an agreement among the parties for a final Consent Order. It accomplishes substantial desegregation in the K-5 schools of the West End. All three schools are desegregated under this plan and are retained as educational institutions. Yet, only a relatively small number of students are disrupted in order to accomplish this end.

Any of these plans might be combined with a program

◇ designed to make Maloney a "Magnet School." Under such a program, the quality of Maloney would be substantially upgraded, making the facility more educationally sound and more attractive to potential transfer students.

* * *

◇
GARRISON & KAHN
ATTORNEYS AT LAW
SUITE 400
152 TEMPLE STREET
NEW HAVEN, CONNECTICUT
06510

182.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

FILED
APR 29 4 50 PM '77
U.S. DISTRICT COURT
NEW HAVEN, CONN.

United States of America,
Plaintiff

and

South End Education Committee, Et Al,
Intervening Plaintiffs

vs.

* Civil Action No. 13,465

Board of Education of Waterbury,
Connecticut, Et Al.,
Defendants

RULING ON REMEDIAL PLANS

The merits of certain remedial plans in this long-pending school desegregation case have been argued before the undersigned magistrate as special master. A brief summary of the litigation's course may help to place current issues in perspective.

Suit was commenced under 42 U.S.C. §2000c-6 in 1969, with the plaintiff United States of America's complaint for injunctive relief essentially alleging purposeful discrimination against black and Hispanic elementary school students in the operation of the City of Waterbury's public school system. Named as defendants were the municipality, its board of education, the board's members and the mayor and superintendent of schools; defendants asserted, inter alia, that the concentration of minority group students in particular elementary schools resulted from no deliberate official policy or de jure segregation, but reflected instead a neighborhood residential pattern or condition of de facto segregation

RECEIVED

183.

APR 29 1977

Corporation Counsel's Office

"created by factors apart from the conscious activity of government", Hart v. Community School Board of Education, New York School District #21, 512 F. 2d 37, 49 (2 Cir. 1975), and that in any event affirmative action was being taken to eliminate the racial identity of Waterbury schools. While defendants continued to deny the government's discrimination claim, the parties' ultimate entry into a consent decree in 1973 rendered unnecessary a trial of the disputed question, and the Court accordingly has not been required to decide the difficult issue of constitutional dimension ordinarily central to allegations of de jure segregation under the evolving law - i.e., the existence or absence of official "purpose or intent to segregate", Keyes v. School District No. 1, Denver, Colo., 413 U.S. 189, 208 (1973) (emphasis original), see also Washington v. Davis, 426 U.S. 229, 240 (1976), cf. Austin Independent School District v. United States, ___ U.S. ___, 45 U.S.L.W. 3413 (Dec. 6, 1976), compare Hart, supra, cf. also Arthur v. Nyquist, 415 F. Supp. 904 (W.D.N.Y. 1976), appeal pending, 2 Cir. Docket No. 76-7449.

The 1973 consent decree which was issued as the controlling court order herein by express agreement of the parties noted significant steps taken by defendants, principally their commitment to a school construction project to create three middle school complexes (grades 6-8); the parties agreed in this regard that

"the completion of the proposed middle school complexes, plus a reconstitution of the zone lines for the K-5 schools so as to obtain the greatest amount of desegregation possible, would make the operation of the school system at that time in complete compliance with federal law concerning desegregation of public schools".

To put such general statements in more concrete context, the

consent order contained an appendix labeled "Attachment A" consisting of school staff proposals in specific terms for the middle school attendance zones, feeder patterns and district lines for the lower (K-5) schools, and the phasing out of certain existing facilities. The government concurred in the proposition that "upon completion of each new middle school and the implementation of the student assignment plan in Attachment A...or an equally effective plan, the schools ...will be satisfactorily desegregated", while defendants represented that they were "committed to the implementation of the concepts contained in Attachment A...or an equally effective plan".

That controlling 1973 order agreed to by defendants explicitly directed them to formulate and put into effect a student assignment plan which would

"achieve the greatest amount of desegregation possible, considering the practicalities, and...[was to] be implemented in such a manner that the burden of desegregation does not fall more heavily upon students of one race or national origin than upon students of another race or national origin".

Providing for hearing in the event of disagreement as to the plan's compliance with those agreed-upon standards, the consent decree also recited that

"[w]hile the specific zone lines and utilization of buildings proposed in Attachment A hereto are not required, the results projected under that plan together with the previous policy statements of the defendants concerning student assignment...shall serve as guides in determining whether the final plan substantially conforms to...[the] above."

At this point, the north end middle school is still under construction, while the east end complex was opened in 1974 and the west end facility in 1976; this last mentioned school

complex was recently viewed by the Court in connection with other motion proceedings and demonstrates an impressive investment in plant, curriculum, staff and planning. The dispute now before the Court concerns proposed K-5 student assignments among three existing and relatively closely grouped lower school facilities, Barnard, Duggan and Maloney, which are included among those various lower schools expected to "feed into" that west end middle school.

These three K-5 elementary schools are all old facilities with enrollment under capacity. Which is physically "superior" is the subject of some debate, but there seems no dispute that the quality of staff and instruction at each is comparable. Maloney is separated from the other two by such urban barriers as major highway and railroad overpasses; literally across the tracks, it is located in a redevelopment area, virtually adjacent to a heavily traveled main street and next to an ambulance service, a site perceived by many Barnard school parents at least as rundown and unsafe. Pupil composition is also markedly different among the schools. According to last fall's enrollment figures, at Maloney the racial or ethnic "minority" children comprised nearly 87% of the total school population of slightly more than 200; of that number several were black and over 170 were Spanish surnamed, or Hispanic, and these figures themselves apparently did not take into account a substantial number of other children in ungraded bilingual classes. At Barnard, a school district stretching over a larger but less central area from near the Maloney district west to the city limits, the total enrollment is comparable but the student make-up is practically the reverse; "minority" pupils represent less than 11% of the total, fairly

evenly divided between black and Hispanic. At Duggan, serving an area partly between Barnard and Maloney, there are a number of special education classes involving a total of 43 children, 16 black and 27 white, assigned regardless of neighborhood residence; the "regular" classes consist of only 135-140 children from the Duggan zone, of which slightly under 40% are "minority", including 40 Hispanic children.

What may be inferred from the above is indeed the case - there is a concentration of Spanish surnamed families in one area of the city. Illustrative of the overall school population's composition are statistics as of March, 1975 furnished to the Court in earlier proceedings, disclosing that the total student enrollment in Waterbury's entire public school system was 17,654, of which 12,267 were white, 3,612 black, 1,735 Spanish surnamed or Hispanic, 31 American Indians and 9 Asian Americans. Neither the high school nor middle school attendance zones are confined to neighborhoods, taking in larger regions with concomitant necessary bus transportation, but the K-5 schools more nearly reflect the immediate neighborhood, and it is a fact that Hispanic families are heavily concentrated in Waterbury's "south end", which itself forms part of both the "west" end and "east" end for purposes of middle school assignment.

As of the time the 1973 consent decree was issued, there were three schools in the south end which were predominantly Hispanic - Merriman, Maloney and Croft. Merriman and Maloney were in close proximity in the city's center, and had the greatest number of Hispanic children, but Merriman was considered in the east end middle school feeder zone, while Maloney and Croft were regarded as in the west end. As part of the

west end plan in Attachment A to the 1973 consent order, the staff had recommended using Croft (either temporarily while a new building was erected or on a permanent basis after extensive remodeling) as the school which would accommodate the K-5 grades from Barnard, Duggan and Maloney plus 100 children from yet a fourth district; Barnard and Maloney were slated for closing, with Duggan to be retained as a special education center.

Without reopening the consent order, in 1975 the Court allowed limited intervention as parties plaintiff by the South End Education Committee, an "unincorporated organization of Puerto Rican parents and community leaders", together with a number of individual parents, who were concerned that a plan then favored by defendants, Plan II, would unduly burden the Hispanic community. That concern proved well-founded when the merits of the proposal were heard in 1976. Defendants had not followed the Attachment A recommendation; in the language of the consent order obligation, the assertedly "equally effective" Plan II did not call for the closing of Barnard and withdrawal of "regular" pupils from Duggan, the predominantly white schools, but did continue to contemplate the closing of Maloney, while phasing out Croft. Overall, no school facility was to be left in the predominantly Hispanic area. Moreover, going out of that immediate neighborhood would require busing, a significant change. For example, the record suggests that today all Maloney students walk to school; presumably because of the greater area covered by Barnard, 1/3 of its children are bused to school. Regardless of distance, however, the potential hazards posed by travel between Barnard and Maloney - e.g., highway overpass - would

necessitate busing any child switched from one school to the other. Defendants' Plan II obviously failed to satisfy their self-imposed consent decree obligation to devise a desegregation plan "such...that the burden...does not fall more heavily upon students of one race or national origin than...another", for the defendant superintendent's uncontested statistics revealed that the plan would have resulted in a much greater number and highly disproportionate percentages of black and Hispanic children being bused, the Hispanic children having also lost any vestige of neighborhood schooling.

The Court naturally could not accept a plan clearly inconsistent with the agreed-to 1973 consent order's requirements, and defendants were afforded a further reasonable opportunity to draw up an alternative plan to meet their commitment under the agreed-upon standards of the governing 1973 decree. In December of 1976, defendants submitted an "update": its option A would have retained Barnard and Duggan, with Maloney grades K-3 to stay at Maloney but its grades 4-5 to "attend the Barnard and/or the Duggan Schools"; option B would have left each of the three schools "as is" and committed defendants "to make additional capital improvements to the Maloney School plant". How these plans could be thought on their face to comply with defendants' voluntary undertaking by consent order to effect "the greatest amount of desegregation possible, considering the practicalities", while not unduly burdening one racial or ethnic group or another, is not clear, and the deposition testimony of certain school board members and staff thereafter sheds little light on the matter. These proposals were ultimately withdrawn prior to hearing.

In January of 1977, the undersigned was appointed special

master and directed the government and intervening plaintiffs to file specific counter-proposals. The government promptly retained as an expert consultant Dr. Warren Buford, currently dean of Pepperdine University - Southeast, South Carolina, who has acted as a desegregation consultant in many school districts, although that experience almost exclusively involved remedial measures for de jure segregation in southern states. Dr. Buford reviewed suit documents, spent two days in Waterbury observing the schools and in discussions with school and municipal officials, and on February 14 filed a plan essentially calling for the closing of Barnard and reassignment of its students to Duggan and Maloney, with most of its white children being bused to Maloney. That same day, defendants formulated another plan revision through a board of education vote that "the three elementary schools, Barnard, Maloney, Duggan be retained as K-5 and that the three schools be considered one contiguous school district on an open enrollment basis".

Shortly before scheduled argument on these plans in March, the Barnard School PTA, Inc. sought to intervene "to protect the rights of parents and children in the Barnard School district"; while this eleventh-hour intervention as a formal party was denied as untimely, the proceedings were postponed to allow the applicant effective participation as amicus curiae, and amicus did develop and offer alternative proposals of its own at the recently concluded legal arguments in April. Its Plans A and B are basically more sophisticated versions of defendants' latest effort, the open enrollment or "freedom of choice" approach; Plan A consists of a wholly voluntary system of "majority to minority" transfers, under

which any students in a majority racial or ethnic group at one school could transfer to either of the other two schools if they would then be members of a minority group at that school, while Plan B would essentially assign to Maloney all Barnard and Duggan children whose parents did not interpose prompt objection upon formal notice that such an assignment was contemplated. A third alternative, Plan C, was additionally suggested by amicus, combining the feature of voluntary majority to minority transfer as between Barnard and Maloney with compulsory reassignment of Duggan's smaller "regular" student population, "minority" children to Barnard and white children to Maloney, keeping Duggan open as a special education center.

Before examining these various proposals further it should again be stressed that this Court is not engaged in the correction of school assignment policies which have been probed by trial and held purposefully discriminatory, in which event the judicial task would be to redress a violation of constitutional rights - with full awareness that in "any equity case, the nature of the violation determines the scope of the remedy", Swann v. Charlotte-Mecklenburg Board of Education, 402 U.S. 1, 16 (1971). ^{Noe} ~~Will~~ Will the Court act as a school board to substitute its views concerning purely educational policy for the judgment of public officials charged with responsibility for the city's schools. The Court's function here is simply to monitor and enforce defendants' compliance with their own voluntary undertaking in this suit to prepare and implement a school desegregation plan which will, in the words of the parties' freely arrived at and binding agreement, "achieve the greatest amount of desegregation possible, considering the practicalities", yet

"in such a manner that the burden...does not fall more heavily upon students of one race or national origin than...another".

Defendants have evidently found that consent order obligation difficult. It will be recalled that their own staff recommendation in Attachment A for the schools now in question was that all regular K-5 students in Barnard, Duggan and Maloney be reassigned to yet another Hispanic neighborhood school and perhaps ultimately to a newly built facility. Part of defendants' agreement in the 1973 decree was that they were "committed to the implementation of the concepts contained in Attachment A...or an equally effective plan", and that the Attachment A proposal would serve as a guideline for assessing whether any other plan "substantially conforms". In the last four years, following abandonment of the Attachment A recommendation for the area now under scrutiny, defendants' various plans formally offered as presumably "equally effective" to discharge their duty have been: (1) closing of Hispanic but not white schools, leading to busing of nearly 2/3 of the Hispanic children and but approximately 1/20 of the white children; (2) busing of Maloney's fourth and fifth grades, predominantly Hispanic, to Barnard or Duggan; (3) standing pat, with capital improvements to be made at Maloney; and (4) standing pat, but allowing any child at Barnard, Duggan or Maloney to attend any one of the three schools desired. Just what the basis was under the 1973 consent decree standards for these proposals was never made plain, and while it was - and is - defendants' duty to devise an appropriate plan, as a practical matter this Court has found it helpful to elicit specific suggestions from all concerned in order to attempt to

bring likely alternatives into sharp and prompt focus.

Prior to the recent open enrollment or freedom of choice recommendation, and the subsequent variations on that theme by amicus, defendants' affirmative proposals were essentially for one-way transfer out of the Hispanic neighborhood. It was in that context that the government's expert, Dr. Buford, recommended instead the closing of Barnard and reassignment of white children into the Maloney district. Dr. Buford proceeded on a number of assumptions, e.g.: (1) that closing Maloney is ruled out as violative of the court order that no group be unduly burdened, although he briefly indicated that his conclusions would not have been different in any case; (2) that it is desirable to maintain the K-5 structure in each school; (3) that only the three schools under study would be considered; and (4) that it is desirable to correct the present under-utilization of each facility, having now a total theoretical capacity of 1300 and actual enrollment of approximately 550 regular students (plus special education and bilingual classes). Regarding Duggan as a more desirable physical facility, Dr. Buford concluded that Barnard should then be closed, with its current busing stepped up, basically to send its minority children to Duggan and most whites to Maloney.

To the extent that any alternative before the Court turns on a comparison of physical plant among the three schools, however, the existing evidence from a number of sources is equivocal, and no obvious "superiority" ranking has been established. In that regard, it is perhaps noteworthy that virtually all would agree that the construction of a new school building to serve all three existing school populations

would be the best solution. That long range answer was implied by the original Attachment A proposal, and was apparently suggested to Dr. Buford this year by city planning officials. Even he has stressed that the government proposal could be viewed only as a short term remedy, and the parents heard from to date have largely been interested in or content with the idea of a better-located, new facility whether or not constructed in the Hispanic area. Defendants represent that they are not now in a position financially to make a definite commitment on any timetable aimed at construction of an entirely new school, plausibly indicating that municipal resources are now too strained, and the future shape of school system financing in this state remains currently uncertain, cf. Horton v. Meskill, 38 C.L.J. No. 42 (April 19, 1977).

Absent immediate availability of such an "ideal" solution for the long run, when "considering the practicalities" what would in the interim "achieve the greatest amount of desegregation possible" without disproportionate burden for one racial or ethnic group or another? This last element of undue burden, the question of fairness, is perhaps the most important in the circumstances, and certainly the most easily tested and quickly felt. Indeed, it is related to "the practicalities" as well, for surely a minimum of "disruption" as amicus would put it is both an appropriate practicality to be considered and a measure of fairness. For the rest, desegregation is not an abstract numbers game, and the Court is not required to ignore the concern of all parents here, as expressed by one recently, that "the children are not just little pieces on a chess board, they're human beings."

As previously observed, the present dispute involves but

a limited number of grades, a few schools, one part of the city, and even in a case of established de jure segregation - which this is not - the mere existence of a few largely one-race schools is not necessarily forbidden, see Swann v. Charlotte-Mecklenburg Board of Education, supra at 26. Without stinting in its efforts to show appropriate affirmative action under the 1973 consent order standard, for example, the government's proposal through Dr. Buford would itself leave Duggan perhaps even more predominantly white than before; indeed, although the plan does appear superficially to show an even balance created between whites and Hispanics at Maloney, the figures used are misleading because they do not reflect a substantial additional number of pupils in the bilingual classes there. Defendant's Plan H, on the other hand, could have yielded a theoretically "perfect" mix, but its arithmetic did not take into account undue impact on Hispanic children.

The "Buford plan" does leave the impression that Plan H has simply been turned on its head - i.e., one-way white transfer into Maloney substituted for one-way largely Hispanic transfer out of Maloney, with a substantial increase in necessary busing in either situation. Dr. Buford suggested that perhaps 140 children not now bused in the Barnard district would be under the government proposal. That recommendation may be usefully compared with Plan C, offered by amicus. While expediently for amicus Barnard leaving that school open and its existing busing system relatively intact, Plan C would retain Duggan as a special education center as contemplated by the initial Attachment A proposal, and certainly bring a substantial number of minority children into Barnard and white children into Maloney. There is of course some logical force

to resorting to Dugan as the partly "in-between" district to feed into the two flanking school zones, with Dugan also having the fewest regular students; contrasted with the Buford plan, Plan C would place less strain on Maloney's facilities, and apparently call for less busing, a matter of some weight considering the ages of the children involved. Although Plan C would still leave one school predominantly white and the other predominantly Hispanic, the Buford plan apparently would too; as just indicated, the government proposal would leave Dugan's composition pretty much as before, and the "balance" struck at Maloney would not seem an accurate depiction of the number of Hispanic children actually attending. In any event, the government's expert purportedly selected Barnard for closing because it seemed to him shabbier than Dugan; in view of its significance, that choice is surprisingly unaccompanied by a concrete showing of specific facts to buttress Dr. Buford's visual impressions.

As against these efforts, defendants have finally offered a simple open enrollment plan, with no prediction that its outcome will in fact change the existing situation one whit. While an "optional majority-to-minority transfer provision" has been thought "a useful part" of desegregation plans, Swann v. Charlotte-Mecklenburg Board of Education, *supra* at 26, and a genuinely promising full-scale freedom of choice plan has never been entirely ruled out absent "reasonably available other ways...promising speedier and more effective conversion to a unitary, nonracial school system", Green v. County School Board of New Kent County, 391 U.S. 430, 441 (1968), open enrollment or freedom of choice has been generally regarded as actually "ineffective and therefore unacceptable", Hart, *supra* at 54. Applying the standards of the agreed-upon

consent order obligation, however, this Court is not constrained to reject this proposal outright, and it would seem reasonable to test the open enrollment approach offered before turning to any strictly involuntary solution.

The basic freedom of choice suggestion is defendants', after all, and they are the ones charged in the first instance with formulating an appropriate plan under the 1973 consent decree. Nor can it be stated with absolute certainty in advance that attempting a voluntary approach will be a fruitless exercise, for no one has polled the hundreds of parents whose children are affected. Moreover, immediate provision of notice to parents of potential school transfer with opportunity to respond will promptly demonstrate the plan's actual prospects.

One weakness evident in defendants' latest recommendation is that it includes no contingency plan in the event of failure. As forthrightly conceded by counsel for defendants at oral argument, this case has been pending far too long to permit the risk of another lost school year posed by simply leaving defendants to consider back-up plans for the first time at summer's outset if the suggestion now offered has by then proved inadequate. Adoption of a reserve plan now is consequently essential.

While amicus Barnard's Plan C appears to the undersigned the most sensible back-up plan on its face among the alternatives examined, it must be stressed once more that by the express terms of their consent order agreement defendants bear the responsibility for approving a plan conforming to that consent decree's standards. Absent default by defendants, the Court naturally would be reluctant to take on itself a

responsibility of the defendants which is theirs not only under the 1973 agreement controlling this case but by the very logic of their public function and presumed expertise. The situation presented certainly verges on default, however, and the public interest in this long-running suit demands an end to delays; for defendants to start up a contingency plan from scratch even now is probably too late, i.e., would probably lead to yet another school year lost, unless such a fresh proposal was so patently and literally "equally effective" a desegregation method as any proposal before the Court, and as even-handed, that it would require no test by discovery or extended evidentiary hearing, and its merits could be satisfactorily demonstrated to and reviewed by the responsible Judge simultaneously with his hearing of and action on any oral argument in the near future on the undersigned's instant report as special master.

Weighing all of the above in the light of the entire record, the Court will order an initial test of a voluntary single-district plan embracing Barnard, Duggan and Maloney as K-5 schools, with a second plan in reserve for student reassignment consistent with amicus Barnard's Plan C.

First, defendants are by May 23, 1977 to send written notice to all parents or guardians of those children who can be identified through reasonable effort as expected to attend grades K-5 at Duggan, Barnard and Maloney during the school year 1977-1978 that (1) the board of education has recommended treating the schools as constituting a single school district, and (2) any child whose parent or guardian has not furnished written objection to the board of education by June 3, 1977 will be regarded eligible for assignment to any one of the

three schools in the board's discretion. Such notice will not be given parents or guardians of children expected to attend the special education classes at Duggan or the ungraded bilingual classes at Maloney, since it is anticipated that these programs will and should remain unaffected. Defendants will advise all parties and amicus of the results and report those results to the responsible Judge by June 6, 1977. If the pool of students eligible for majority-to-minority transfer through lack of objection is so small or of such composition that white children would represent more than 2/3 of the whole student population at either Barnard or Duggan, or black and Hispanic children more than 2/3 of the whole student population at Maloney, the reserve plan will be immediately ordered into effect and parents and guardians so informed by defendants forthwith.

Absent any acceptable further proposal from defendants involving fully as equitable means and effective results as amicus Barnard's Plan C, the latter will be adopted as the reserve plan, leaving Duggan as a special education center, with its minority pupils in the regular classes to be reassigned to Barnard and its white pupils in the regular classes to be reassigned to Maloney.

Intervening plaintiffs have additionally requested that defendants (1) for the short term commit themselves "to do any repair or provide any maintenance necessary to assure that the Maloney plant will be a safe and effective school building", and (2) for the long term represent "that the next capital construction project undertaken by the city will be a new elementary school in the present Maloney School district". Defendants would hardly disclaim an appropriate repair and

maintenance obligation as to existing facilities. Although the specifics and ordering of priorities might give rise to disagreement, there is evidence in the record supporting intervenors' illustrative examples of need for repair of roof leaks and replacement or repair of the gym floor; this last item was actually offered as part of defendants' earlier Plan II, and defendants have made no formal response to the current demand for an order for repair and maintenance. Failing a persuasive showing of fiscal impossibility, the repair and maintenance undertaking requested would seem an appropriate element to be included in final approval of the interim plan now in question.

The above plan is indeed an interim measure, a short run arrangement. As previously remarked, new school construction is probably the best long range solution, but defendants have represented that municipal finances are such that no definite timetable could be offered. Defendants have not specifically responded to the request that a construction project in this area of the city at least be given top priority, however, and absent a showing of reasons to the contrary such a policy commitment would also seem appropriate for inclusion in the Court's order herein.

The foregoing proposed ruling constitutes the undersigned magistrate's findings of fact and conclusion of law as special master empowered to act on pending matters in this civil action during the absence of the trial Judge from the District of Connecticut, and is hereby submitted as the master's report to this Court pursuant to Rule 53(e)(1), Fed. R. Civ. P. A review hearing under Rule 53(e)(2), Fed. R. Civ. P., will be

held before the Honorable Thomas F. Murphy, Senior United States District Judge, at 10:00 A.M. on May 16, 1977 at the United States Courthouse in Waterbury, Connecticut. In connection therewith, any final plan suggestions from defendants, and any further briefs addressed to this report and attendant requests for its adoption, modification or rejection, are to be (1) discussed orally among all counsel prior to the argument hearing, and (2) furnished to Sylvester A. Markowski, Clerk of the Court, at New Haven, Connecticut no later than May 11, 1977 for inclusion with his delivery of pertinent file documents to the reviewing Judge.

Dated at New Haven, Connecticut, this 28th day of April, 1977.

Arthur A. L. Limer
United States Magistrate

201

RECEIVED

MAY 13 1977

Corporation Counsel's Office

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,
Plaintiff,
AND
SOUTH END EDUCATION COMMITTEE, et al.,
Intervenors,

-against-
o

THE BOARD OF EDUCATION OF WATERBURY,
CONNECTICUT, et al.,
Defendants.

CIVIL ACTION

NO. 13,465

INTERVENORS' REQUEST FOR MODIFICATION OF MAGISTRATE'S REPORT

This statement is filed pursuant to the April 28, 1977 report of United States Magistrate Arthur H. Latimer. Intervenors are particularly concerned about the procedures to be followed in the proposed initial test, which are as follows:

defendants are by May 23, 1977 to send written notice to all parents or guardians of those children who can be identified through reasonable effort as expected to attend grades K-5 at Duggan, Barnard and Maloney during the school year 1977-1978 that (1) the board of education has recommended treating the schools as constituting a single school district, and (2) any child whose parent or guardian has not furnished written objection to the board of education by June 3, 1977 will be regarded eligible for assignment to any one of the three schools in the board's discretion.
Ruling on Remedial Plans, pp. 16-17.

MAY 13 1977

Corporation Counsel's Office

The requirement of affirmative notice puts an undue burden on parents, particularly those who are not proficient in reading or writing, to "opt-out" of the single district assignments. Additional problems will be presented where parents or guardians are absent during the time to respond or where the notice is not actually received. A truly voluntary single school district can be achieved only if parents are requested to respond affirmatively to proposed participation in a single school district assignment procedure. Therefore, intervenors propose that the procedures be amended as follows:

(2) any child whose parent or guardian has furnished written notice of agreement to the board of education by June 3, 1977 will be regarded eligible for assignment to any one of the three schools in the board's discretion.

Intervenors' counsel have received this date the plaintiff's Objections to the Magistrate's April 28, 1977 Report. Counsel have scheduled a meeting with Intervenors for Thursday, May 12, 1977 to discuss these objections and will report to the court on Monday, May 16, 1977 the result of that meeting.

THE INTERVENORS

By

Alice Bussiere
New Haven Legal Assistance
P.O.Box 7266
New Haven, Connecticut 06519
(203) 787-2153

Kenneth Kimerling
Puerto Rican Legal Defense &
Education Fund, Inc.
95 Madison Avenue, New York, N.Y.

Attorneys for Intervenors

UNITED STATES MAGISTRATE

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT
141 CHURCH STREET
NEW HAVEN, CONNECTICUT 06510

ARTHUR H. LATIMER
MAGISTRATE

May 11, 1977

RECEIVED

MAY 14 1977

Corporation Counsel's Office

Leigh M. Manasevit, Esq.
Education Section
Civil Rights Division
United States Department of Justice
Washington, D.C. 20530

Re: United States v. Waterbury Board of Education,
Civil No. 13,465
Your Reference: DSD: LMM: lf
DJ 169-14-1

Dear Mr. Manasevit:

This is to acknowledge receipt of your letter of May 9, 1977 requesting that as special master I "reconsider certain factual conclusions of the April 28, 1977 Report in the above-styled case inasmuch as they may be based upon numerically inaccurate information", and to advise that your correspondence is being forwarded to Judge Murphy with the other pertinent suit documents this date as contemplated by that report. The request is declined without prejudice to review rights; I consider myself to have discharged the reference.

I might ordinarily have entertained such a request if critical to the outcome and made in proceedings of no compelling urgency, cf. Rule 53(e)(5), Fed. R. Civ. P. As close reading of the report will indicate, I did not find that Amicus Plan C would desegregate Maloney to the same extent as the Buford plan, as counsel mistakenly infers, but was concerned that the Buford figures were overly optimistic in excluding bilingual students, just as I was concerned by other vague aspects of the proofs offered, such as the relative physical superiority of one or another school facility. To any extent the Court regards the precise racial

206

"mix" significant here, however, which I did not, the matters raised would seem best and most expeditiously dealt with directly at the review level, under Rule 53(c)(2), Fed. R. Civ. P.; the fact that time is of the essence was of course a primary reason for the master's submission of a report for immediate review rather than circulating a draft report for comment under Rule 53(c)(5). In my view, therefore, any further communications should be addressed directly to the reviewing Judge.

Yours very truly,

Arthur H. Latimer

Arthur H. Latimer
United States Magistrate

AllL:sas

cc: Hon. Thomas J. Murphy, Sr. U.S.D.J.
Kenneth Kimmerling, Esq.
John Phelan, Esq.
Joseph Garrison, Esq.

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA.

Plaintiff

AND

SOUTH END EDUCATION COMMITTEE, ET AL

Intervenors

-against-

THE BOARD OF EDUCATION OF WATERBURY
CONNECTICUT, et al

Defendants

CIVIL ACTION

NO. 13,465

June 6, 1977

PLAN 2 OF DEFENDANTS

WATERBURY BOARD OF

EDUCATION DATED

DATED JUNE 6, 1977

208.

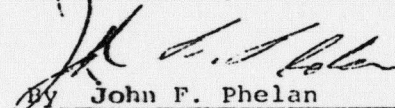
On June 6, 1977 the following named Commissioners of the Waterbury Board of Education signed the following document/ which at approximately 9:55 P.M. may reflect a new statement of position by these Commissioners in regard to the Board's February 14, 1977 Vote re open enrollment, which Vote was filed in this Honorable Court on or about February 15, 1977 as the "Attachment A Plan".

Plan Z is: "Bus 25 volunteers, (starting from the farthest from Maloney School) of Hispanic ancestry from Maloney to Barnard. (No family would be split unless by choice of the family.)

"Bus 75 Barnard children living the farthest distance from Barnard to Maloney. Board will review remaining Duggan and Barnard districts to modify district lines of these two schools to achieve the greatest degree of racial balance." The said Plan Z was signed by the following Commissioners: William J. Beckett, Ronald E. Brodeur, Marie P. Lanza, Patricia Devino, Charles J. Bannon, Keith Q. Kilborn and Edward J. Duffy, Jr.

The undersigned as counsel for the defendants is forthwith transmitting Plan Z to this Honorable Court for its consideration at the June 10, 1977 hearing.

DEFENDANTS, THE BOARD OF EDUCATION
OF WATERBURY, CONNECTICUT et al


By John F. Phelan
Their Attorney

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

----- x
UNITED STATES OF AMERICA, :
Plaintiff, :
and :
SOUTH END EDUCATION COMMITTEE, : CIV. No. 13,465
et al., :
Intervening Plaintiffs, :
vs. :
BOARD OF EDUCATION OF WATERBURY, : ORDER
CONNECTICUT, et al., :
Defendants. :
----- x

At a hearing today, June 10, 1977, we were informed that the Court-ordered survey of the Voluntary Single District Integration Plan had failed. Four hundred seven of the parents or guardians of children involved indicated objection to the Plan, with only ten agreeing.

All counsel representing the plaintiff, defendants intervenors and Amicus were then heard on the merits or demerits of the most recent Plan Z of the defendants, the Buford Plan submitted by the Government and supported by the intervenor, and Amicus Plan C. We also heard counsel for five parents of children attending the Duggan School.

We, after due consideration, approve and concur in Magistrate Latimer's Ruling On Remedial Plans, dated and filed on April 28, 1977, and hereby approve Amicus Plan C, and direct the defendants to immediately make

RECEIVED

JUN 13 1977

Corporation Counsel's Office

The
and

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28
- 29
- 30
- 31
- 32

preparations to have such Plan fully operative by
September 7, 1977.

This is an order.

Thomas F. Murphy
Thomas F. Murphy
Senior United States District Judge

Dated: Waterbury, Ct., June 10, 1977.

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA,
Plaintiff,

and

SOUTH END EDUCATION COMMITTEE,
ET AL

Intervening Plaintiffs,

V.

BOARD OF EDUCATION OF WATERBURY,
CONNECTICUT, ET AL,
Defendants

CIVIL ACTION NO. 13465

NOTICE OF APPEAL

Notice is hereby given that The City of Waterbury,
defendant above named, hereby appeals to the United States Court
of Appeals for the Second Circuit from the Order implementing
Amicus Plan C for the desegregation of the Waterbury School
System entered in this action, Civil No. 13,465, June 10, 1977.

ATTORNEYS FOR DEFENDANTS

By

Michael J. Daly, 3rd
50 Holmes Avenue
Waterbury, Connecticut

Carl R. Cicchetti
236 Grand Street
Waterbury, Connecticut

Dated at Waterbury, Connecticut
this 29th day of June 1977.

212

RECEIVED

JUL 11 1977

Corporation Counsel's Office

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

----- x
UNITED STATES OF AMERICA :

vs. :

THE BOARD OF EDUCATION OF :
WATERBURY, CONNECTICUT, et :

CIV. NO. 13,465

----- x
Transcript of remarks in Judge Murphy's
chambers, Waterbury, Connecticut, at
the signing of the Consent Decree on
June 8, 1973.

Appearances:

Judge Thomas F. Murphy

Magistrate Arthur H. Latimer

John F. Phelan, Esq.)

James F. Meenan, Esq.) Corporation Counsel's Office

John E. Mahaney, Esq.)

Thomas L. Keeling - Civil Rights Division,
Department of Justice

RECEIVED

JUN 11 1973

Corporation Counsel's Office

213

June 8, 1973

JUDGE MURPHY: Gentlemen, before I sign this Consent Decree, do you want to tell me now, with my secretary here, what the intent of the Board was and what was said at that meeting?

MR. PHELAN: Judge Murphy, as you know my name is John F. Phelan, and I am the Assistant Corporation Counsel and am one of the attorneys for the Board of Education, one of the named defendants in this case.

I believe it was on May 31st we reviewed - by "we" I mean myself, Attorney Meenan and Attorney Mahaney, the Corporation Counsel - reviewed with the Board a proposed Consent Order which the Government had prepared. The Board did not agree with that document and would not authorize us as its attorneys to inform this Court that the Board would accede to that document.

Beginning a week ago today, on June 1st, we had a pretrial meeting with Judge Latimer in New Haven. On Tuesday of this week, which would be June 5th, Mr. Meenan, Attorney Keeling, representing the Justice Department, from Washington, and myself met with Judge Murphy. Beginning in the afternoon of June 5th, based upon suggestions which Judge Murphy made, the attorneys

attempted to reassess their position and develop the themes that were developed before Judge Murphy. As a result of that, as among the attorneys an essential agreement in concept was reached as to what should be a revised Consent Decree.

On Wednesday, Mr. Keeling informed me in a call from Washington that his Department was not willing to modify its position, which was spelled out in what we will call the May 24 Consent Decree, which was the Consent Decree discussed with the Board on May 31st. However, Mr. Keeling indicated that if the Board of Education would modify its position and, in the form of a counter offer, revise the May 24 Consent Decree along the lines of the attorneys' discussion on June 5th, then he said the Justice Department would be willing to agree to such revised Consent Order. Based on that conversation we began the revision of the May 24 proposed Consent Decree, and that revision is embodied in the document which as of this moment the attorneys here present have signed and which we are asking Judge Murphy to approve. The major and substantial revision is that under this proposed Revised Consent Order a timetable is being established for desegregation of the following schools in the following zones in accordance with the following dates:

The so-called East-End Zone by the completion of the East-End Middle School, or September 1974;
The West-End Zone by the completion of the so-called West-End Middle School, or September, 1975; and
The North-Central Zone by the completion of the North-Central Middle School, or September 1977.

A document embodying that concept was presented to a workshop meeting of the Board of Education last evening. The presentation was made by myself and by Mr. Meenan and Mr. Mahaney. There were six members of the ten-member Board present, plus the Mayor of the City of Waterbury, Victor Mambruno, who, under our charter, is the chairman ex officio of the Board of Education. Mayor Mambruno was also present. In addition, the Superintendent of Schools, Dr. Michael F. Wallace, who is one of the named defendants in the case, was present, and also present were the Deputy Superintendent and the staff personnel who were primarily instrumental in drafting the Attachment "A" which has been appended to the proposed Consent Order.

As a result of the discussions with the Board last night, the only significant qualification or objection by the Board to the document which we had proposed was that Paragraph 6, as originally typed and proposed by me, contained language which, if literally followed, could lead to results which none of the

parties intended. In short, the Board asked that there be a test of reasonableness inserted in Paragraph 6 of the proposed Order. We informed the Board that we would take this matter up this morning with Mr. Keeling. On the basis of the review of the document, that is, the proposed Consent Order, which was presented to the Board last night, all six Board members present, via a show of hands - a straw vote, if you will - unanimously indicated their approval and support of the proposed Order and authorized us, as attorneys, to sign same if same met with the approval of Judge Murphy.

In addition, as previously indicated Mayor Mambruno, who was present at the meeting, in response to a question from one of the Board members there present as to what the Mayor's position and reaction was to this proposed Consent Order, stated that after review of same, and after consultation with each of the three Board attorneys, that is, Mr. Phelan, Mr. Meenan and Mr. Mahaney, he enthusiastically was in support of the proposed Order, which he felt thus allowed the Waterbury Board of Education to carry out on a reasonable time schedule that which the Board of Education has been attempting to effect over the last several years, namely, a rational desegregation plan. I should also add that the Mayor was a named defendant in the case, Mayor Mambruno being a substituted defendant for

the former Mayor, George P. Harleman.

This morning, in accordance with the desire of the Board to obtain some breathing room, if you will, in Paragraph 6, Paragraph 6, which is now before Judge Murphy, was amended by adding the word "substantially" between the words "comply" and "with", and adding the word "reasonable" between the words "implement" and "interim", and adding the last modifying clause beginning with the word "unless" at the end of the sentence.

JUDGE MURPHY: Mr. Keeling, is that a fair statement of your recollection of the events so far as you know?

MR. KEELING: Yes, your Honor, that is a fair statement. I think, for the record, I would like to add one other statement, that is, that among the attorneys it was understood that when the Government agrees to this Consent Order, with the provision in the Order stating that the Attachment "A" would serve as a guide, it was intended to indicate that the students residing in the Bishop and Wilton areas would continue to be housed in desegregated schools throughout the process of the implementation of this plan; and to further indicate that the Walsh and Merriman Schools would be desegregated by September 1974 at the latest upon the opening of the East-End Middle School; and that the Driggs and Maloney Middle Schools

would be desegregated by September 1975 at the latest upon the opening of the West-End Middle School.

MR. MEENAN: I think it should be added at this point at this session we are now having that everything was thoroughly aired last night before the Board so that they are completely familiar with the Government's intention and agreed to go along with it.

JUDGE MURPHY: I want to ask you, too, Mr. Meenan, whether what Mr. Phelan said and Mr. Keeling said is in accordance with your recollection.

ALL: Absolutely.

JUDGE MURPHY: Do you want to add anything, Mr. Latimer?

MR. LATIMER: No, your Honor.

JUDGE MURPHY: I will sign the Order in duplicate.

Copy for Magistrate Arthur H. Latimer

Copies for John F. Phelan, James F. Meenan and John E. Mahaney to be sent to: John F. Phelan, Esq., Corporation Counsel's Office, Chase Building, 236 Grand Street, Waterbury, Conn. 06701.

Copy for Government to be sent to: Thomas L. Keeling
Civil Rights Division
Department of Justice
Washington, D.C. 20530

Note on env.: DO NOT OPEN IN MAIL ROOM

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

UNITED STATES OF AMERICA	:	
	:	
Plaintiff	:	
	:	
v.	:	
	:	
THE BOARD OF EDUCATION OF	:	
WATERBURY, CONNECTICUT, ET AL	:	CIVIL ACTION NO. 13,465
	:	
Defendants	:	
	:	
SOUTH END EDUCATION COMMITTEE,	:	
ET AL	:	
	:	
Plaintiff-Intervenors	:	

MOTION TO MODIFY CONSENT ORDER

1. A Consent Order was entered, in the instant school desegregation case, on June 7, 1973, per Order of Honorable Thomas F. Murphy, United States District Judge. Counsel for the defendants and counsel for the plaintiff, United States of America, (hereinafter called original plaintiff) noted their approval of the Consent Order on same.

2. Paragraph 4 of the "Order" portion of the said June 7, 1973 Consent Order reads as follows: "The plan shall specify new attendance zones for students residing in the West End area to be effective upon the completion of the West End Middle School or September, 1975, at the latest, in such a manner that student assignments will be consistent with Paragraph 1, above."

3. Paragraph 6 of the "Order" portion of the said June 7, 1973 Consent Order reads as follows: "In the event that defendants fail to comply substantially with the provisions of paragraphs 3, 4 and 5, above (relative to the date of the implementation of a desegregation plan for the respective affected Middle School attendance zones), then the defendants shall implement reasonable interim measures which will desegregate the schools in the said affected Middle School attendance zones so that student assignments will be consistent with paragraph 1 above, unless the defendants make a timely application for modification of this Order."

4. Paragraph 9 of the said "Order" portion of the said June 7, 1973 Consent Order reads as follows: "The plan described in paragraph 2, above, shall be filed by January 15, 1974, and served upon the plaintiff."

5. Paragraph 10 of the said "Order" portion of the said June 7, 1973 Consent Order reads as follows: "If the parties cannot agree upon the sufficiency of the plan, a hearing will be scheduled to determine whether the plan substantially complies with the provisions of this Order."

6. A new West End Middle School is presently under construction, adjacent to the Kennedy High School, which Middle School, upon its completion, will result in student assignments which will be consistent with Paragraph 1 of the said "Order" portion of the said June 7, 1973 Consent Order.

7. Upon completion and availability for use of the new West End Middle School the provisions and mandates of Paragraph 4 of the "Order" portion of the said June 7, 1973 Consent Order will be effected.

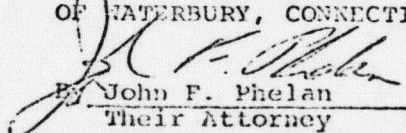
8. The said West End Middle School will not be completed and ready for use in September, 1975 and the likelihood is that the completion date will be more in the area of February or March, 1976.

9. The defendants assert that it is neither workable nor feasible nor educationally sound to implement an interim desegregation plan for the "West End" prior to the completion of the Middle School inasmuch as some of the existing K-8 schools in the "West End" sector of the City are inadequate for the current educational programs and would be totally inadequate for a Middle School curriculum. By the same token the defendants assert that the educational interests of the children of the "West End" sector of the City would not be served by placing them into the new Middle School in the middle of, or towards the end of, a given academic year. The Middle School curriculum and program requires that the students begin the Middle School program at the commencement of an academic year in September.

WHEREFORE, defendants pray that this Honorable Court amend Paragraph 4 of the "Order" portion of the said June 7, 1973 Consent Order as follows: The plan shall specify new attendance zones for students residing in the West End area to be effective upon the completion of the West End Middle School or September, 1976, at the latest, in such a manner that student assignments will be consistent with paragraph 1, above.

Dated at Waterbury, Connecticut this 22nd. day of July, 1975.

DEFENDANTS, THE BOARD OF EDUCATION
OF WATERBURY, CONNECTICUT ET AL


By John F. Phelan
Their Attorney

INDEX

	PAGE
Complaint of Plaintiff, United States of America.....	1
Consent Order	7
Supplement to Consent Order	31
Ruling On Motion to Intervene	45
Defendants' Motion Re: Second Supplement to Consent Order, Plan H, April 1975 Updating	49
Memorandum, Findings of Fact and Conclusions of Law	65
Order to Keep Maloney School Open, September 1, 1976	76
Defendants' Motion Re: Third Supplement to Consent Order, Plan H December 1976 Updating	78
Defendants' Motion to Modify Consent Order	84
Response of United States to Court Order of September 1, 1976 and Counter Proposal to Defendants' Motion Re: Third Supplement to Consent Order	89
Proposed "Buford Plan" of United States for Desegregation of Maloney School	94
Position of Plaintiff - Intervenors regarding an Alternative Desegregation Plan	104(a)
Defendants' Revised Motion Re: Third Supplement to Consent Order	105
Deposition of Warren B. Buford	107
Alternative Plans of Amicus Barnard School P.T.A.	178
Magistrate's Ruling on Remedial Plans	183

II.

	PAGE
United States' Objections to Magistrate's Ruling on Remedial Plans	202
(Intervenor's Request for Modification of Magistrate's Ruling on Remedial Plans)	204
Letter from Magistrate Latimer to Plaintiff's Attorney, Mr. Manasevit.	206
Defendants' Plan Z	208
Order Approving Magistrate's Ruling and Implementing " <u>Amicus</u> Plan C"	210
Defendants' Notice of Appeal	212
Transcript of Proceedings Before Judge Murphy, June 8, 1973	213
Defendants' Motion to Modify Consent Order	220